



Final 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	March 27, 2014

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

Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation. Also, please include a brief description of changes to the regulation from publication of the proposed regulation to the final regulation.

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 amendments update this regulation to reflect the current operation of the Program as well as the agency's current cotton boll weevil quarantine enforcement activities.

Statement of final agency action

Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency or board taking the action, and (3) the title of the regulation.

On March 27, 2014, the Board of Agriculture and Consumer Services adopted as final the amendments to 2 VAC 5-440 *et seq.*, *Rules and Regulation for Enforcement of the Virginia Pest Law – Cotton Boll Weevil Quarantine*.

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.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons it is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal 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 identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. A more detailed discussion is required under the "All changes made in this regulatory action" 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 amendments 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 amendments to the regulation 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 has revised 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 the 2012 and 2013 growing seasons were 50 and 55 cents per acre, respectively. The revised penalties will be 10% of the total fee due. The 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 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 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 there are no disadvantages to the public or the Commonwealth, please indicate.*

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

The 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 total fee due. This reduction in penalties is another advantage to the public.

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

Changes made since the proposed stage

Please describe all changes made to the text of the proposed regulation since the publication of the proposed stage. For the Registrar’s office, please put an asterisk next to any substantive changes.

The agency did not change the text of the proposed regulation following the publication of the proposed stage.

Public comment

Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate.

The agency did not receive any public comments following the publication of the proposed stage.

All changes made in this regulatory action

Please list all changes that are being proposed and the consequences of the proposed changes. Describe new provisions and/or all changes to existing sections.

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 report their cotton acreage and pay their program fees.	The non-substantive amendments to this section are intended to clarify the requirements of this section.
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 fees for the 2012 and 2013 growing seasons were 50 and 55 cents per acre, respectively. 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 articles.	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 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.