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Final Regulation Agency Background Document

Agency name	Department of Agriculture and Consumer Services (Board of)
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
Document preparation date	Enter date this form is uploaded on the Town Hall

This information is required for executive review (www.townhall.state.va.us/dpbpages/apaintro.htm#execreview) and the Virginia Registrar of Regulations (legis.state.va.us/codecomm/register/regindex.htm), pursuant to the Virginia Administrative Process Act (www.townhall.state.va.us/dpbpages/dpb_apa.htm), Executive Orders 21 (2002) and 58 (1999) (www.governor.state.va.us/Press_Policy/Executive_Orders/EOHome.html), and the *Virginia Register Form, Style, and Procedure Manual* (http://legis.state.va.us/codecomm/register/download/styl8_95.rtf).

Brief summary

In a short paragraph, please summarize all substantive changes that are being proposed in this regulatory action.

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, and 4) clarify that in addition to eradication, the regulation prevents reintroduction of the boll weevil into Virginia.

Statement of agency final 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 taking the action, and (3) the title of the regulation.

The Board of Agriculture and Consumer Services unanimously passed the final amended version of the Regulations for Enforcement of the Virginia Pest Law – Cotton Boll Weevil Quarantine on December 4, 2003.

Legal basis

Please identify the state and/or federal source of legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly bill and chapter numbers, if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

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 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 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. A more detailed discussion is required under the "All changes made in this regulatory action" section.

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 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 so indicate.

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.

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.

Section number	Requirement in proposed regulation	Proposed change in final regulation and rationale
2-VAC 5-440-10.	N/A	Adds a definition for “Authorized Inspector” to clarify who may issue certificates, permits and compliance agreements under this regulation.
2-VAC 5-440-30.	Regulated articles.	Adds “into Virginia” following “any regulated area” to clarify that this section prevents the movement of regulated articles from other infested states into Virginia.
2-VAC 5-440-40.	Requirements for program participation.	<p>Section A.1. adds language to clarify the process of how the Commissioner sets the current year’s fee.</p> <p>Section D. deletes language dealing with destruction of crop for non-payment of fees and replaces it with new Section G.</p> <p>Section D. adds language that allows for the trapping of cotton in violation and recovery of costs through Virginia Debt Collection Act.</p> <p>New Section G. replaces deleted language in previous Section D. dealing with destruction of a cotton crop if the Commissioner determines that the crop threatens the safety of Virginia’s cotton industry.</p>

Public comment

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

Commenter	Comment	Agency response

The agency received no public comment following publication of the proposed regulation changes.

All changes made in this regulatory action

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

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
2 VAC 5-440-10.		Definitions	<p>Changes in the following words and definitions are reflected throughout the proposed document:</p> <p>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).</p> <p>Adds a definition for “Authorized Inspector” to clarify who may issue certificates, permits and compliance agreements under this regulation.</p> <p>The technical name for the cotton boll weevil was changed by the Entomological Society of America by adding a second “grandis” to read <i>Anthonomus grandis grandis</i> Boheman.</p> <p>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.</p> <p>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.</p> <p>Defines the term “Department” to mean the Virginia Department of Agriculture and Consumer Services.</p> <p>Amends the definition of “Regulated area” to protect the Commonwealth from boll weevil reinfestation from any infested area.</p>

<p>2-VAC 5-440-30.</p>		<p>Regulated articles.</p>	<p>Adds a definition for “Scientific Permit” to allow movement of regulated articles to a specified destination for scientific purposes.</p> <p>Adds “into Virginia” following “any regulated area” to clarify that this section prevents the movement of regulated articles from other infested states into Virginia.</p>
<p>2 VAC 5-440-40.</p>		<p>Requirements for program participation.</p>	<p>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.</p> <p>Section A.1. also adds language to clarify the process of how the Commissioner sets the current year’s fee.</p> <p>Section A.3. provides the specific address for a citizen to apply for an exemption to grow noncommercial cotton in the Commonwealth.</p> <p>Section B. deletes language relating to emergency or hardship waivers and adds corresponding language to new Section C for consolidation and clarity.</p> <p>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.</p> <p>Section D. deletes language dealing with destruction of crop for non-payment of fees and replaces it with new Section G.</p> <p>Section D. adds language that allows for the trapping of cotton in violation and recovery of costs through Virginia Debt Collection Act.</p> <p>New Section G. replaces deleted language in previous Section D. dealing with destruction of a cotton crop if the Commissioner determines that the crop threatens the safety of Virginia’s cotton industry.</p>
<p>2 VAC 5-440-50.</p>		<p>Conditions governing the issuance of certificates and permits to allow the movement of regulated articles.</p>	<p>Section A. changes “the” to “an authorized” inspector to ensure that only properly trained inspectors may issue certificates for movement of regulated articles.</p> <p>In Sections A.1. and A.2., the term “infestation” is replaced by “boll weevil in any</p>

			<p>living stage” to clarify that any number and life stage of weevils applies to this regulation.</p> <p>Changes to Section A.3. clarify why the regulated article is treated and ensures that only proven treatments are utilized by the inspector.</p> <p>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.</p> <p>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.</p> <p>Section D. changes “the” to “an authorized” inspector to ensure that only properly trained inspectors may issue compliance agreements.</p> <p>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.</p> <p>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.</p> <p>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.</p>
	Section E.		
	Section F.		
	Section G.		
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	440-81	Inspection of shipments.	Section number changed to 2 VAC 5-440-81.

2 VAC 5-440-110	440-91	Determination of reasonableness of costs for services, products, or articles.	Section number changed to 2 VAC 5-440-91. Also the title of this section is amended to better reflect its content.
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Enter any other statement here

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability.

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