



Notice of Intended Regulatory Action (NOIRA) 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 22, 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*.

Purpose

Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.

The intent of this regulatory action is to update certain provisions of the regulation to more accurately reflect the agency's current practices and procedures related to the 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. On March 22, 2012, the Board authorized staff to file a Notice of Intended Regulatory Action to amend Rules and Regulations for Enforcement of the Virginia Pest Law – Cotton Boll Weevil Quarantine (2 VAC 5-440).

Need

Please detail the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. In addition, delineate any potential issues that may need to be addressed as the regulation is developed.

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 Boll Weevil Eradication and Exclusion Program as well as the agency’s current cotton boll weevil quarantine enforcement activities. The Boll Weevil Eradication and Exclusion Program and the cotton boll weevil quarantine assist in preventing the re-infestation of Virginia’s cotton growing areas by the boll weevil.

The agency does not anticipate that any issues will arise during the development of the amendments to this regulation.

Substance

Please detail any changes that will be proposed. Be sure to define all acronyms. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed.

FSA means United States Department of Agriculture’s Farm Service Agency.

VDACS means the Virginia Department of Agriculture and Consumer Services.

The regulation will be amended 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.

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 Boll Weevil Eradication and Exclusion 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 fee for 2011 was \$1.00 per acre and the fee for 2012 will be \$0.50 per acre.

Alternatives

Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action. Also, please describe the process by which the agency has considered or will consider other alternatives for achieving the need in the most cost-effective manner.

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.

Public participation

Please indicate whether the agency is seeking comments on the intended regulatory action, including ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Also, indicate whether a public hearing is to be held to receive comments on this notice.

Please also indicate, to the extent known, if standing or ad hoc advisory panels (also known as regulatory advisory panels) will be involved in the development of the proposed regulation. Indicate whether 1) the agency is not using the participatory approach in the development of the proposal because the agency has authorized proceeding without using the participatory approach; 2) the agency is using the participatory approach in the development of the proposal; or 3) the agency is inviting comment on whether to use the participatory approach to assist the agency in the development of a proposal.

The agency is seeking comments on this regulatory action, including but not limited to 1) ideas to be considered in the development of this proposal, 2) the costs and benefits of the alternatives stated in this background document or other alternatives and 3) potential impacts of the regulation. The agency is also 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) the probable effect of the regulation on affected small businesses, and 3) the description of less intrusive or costly alternatives for achieving the purpose of the regulation.

Anyone wishing to submit 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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VDACS Division of Consumer Protection
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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 day of the public comment period.

A public hearing will not be held following the publication of the proposed stage of this regulatory action.

Family impact

Assess the potential 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 family or family stability.

Periodic review/small business impact review result

If this NOIRA is not the result of a periodic review/small business impact review of the regulation, please delete this entire section.

If this NOIRA is the result of a periodic review/small business impact review, please (1) summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and (2) indicate whether the regulation meets the criteria set out in Executive Order 14 (2010), e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily

understandable. In addition, 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.

The agency filed a Notice of Periodic Review for this regulation on March 31, 2011. The agency did not receive any comments during the subsequent public comment period.

Per Executive Order 14 (2010), this regulation is necessary for the protection of the public health, safety, and welfare. The agency intends to amend this regulation to improve its understandability.

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.