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## Periodic Review and Small Business Impact Review Report of Findings

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| <b>Agency name</b>  | Board of Agriculture and Consumer Services  |
| <b>Virginia Administrative Code (VAC) Chapter citation(s)</b> | 2 VAC 5-450   |
| <b>VAC Chapter title(s)</b>                                   | Rules and Regulations Relating to the Virginia Plants and Plant Products Inspection Law |
| <b>Date this document prepared</b>                            | October 3, 2022   |

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19, the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), 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.*

"Board" means the Board of Agriculture and Consumer Services.

## 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 and authorizes the Board to adopt regulations in accordance with the

provisions of Title 3.2 of the Code. Chapter 38 of Title 3.2 of the Code (Va. Code §3.2-3800 et seq.) directs the Commissioner of Agriculture and Consumer Services to protect the agricultural, horticultural, and other interests of the Commonwealth from plant pests and establishes the nursery registration, inspection, and shipping requirements of nursery stock.

### 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 regulation provides for the prevention of the spread of plant pests by establishing rules regarding the inspection of certain plants when nursery stock is sold, which enhances the marketability of Virginia grown nursery stock and facilitates the acceptance in interstate commerce of Virginia-produced narcissus plants, narcissus bulbs, and vegetable transplants. Additionally, the regulation prohibits the movement of *Ribes nigrum* plants, commonly known as European black currants, to any destination in Virginia to prevent any harboring or dissemination of the destructive plant disease *Cronartium ribicola*, commonly known as White Pine Blister Rust. The agency determined that these requirements are not unnecessarily burdensome and provide an important means of prevention of the spread of plant pests in nursery stock with the least possible cost and intrusiveness to the citizens and businesses of the Commonwealth. Therefore, alternatives to this regulation were rejected.

### Public Comment

*Summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and provide the agency’s 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.*

An informal advisory group was not formed for the purpose of assisting in this periodic review.

| Commenter                              | Comment  | Agency response   |
|--|--|---|
| Virginia Farm Bureau Federation (VFBF) | We believe the current regulations are sufficient. VFBF has no recommended changes for 2 VAC 5-450 but reserves the right to provide additional comment should regulatory changes be proposed. | The agency appreciates the commenter’s participation in this periodic review. |

### Effectiveness

*Pursuant to § 2.2-4017 of the Code of Virginia, indicate whether the regulation meets the criteria set out in the ORM procedures, including why the regulation is (a) necessary for the protection of public health, safety, and welfare, and (b) is clearly written and easily understandable.*

This regulation is necessary for the protection of public health, safety, and welfare in that it prevents the spread of plant pests. The regulation is clearly written and easily understandable.

## 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).*

*If the result of the periodic review is to retain the regulation as is, complete the ORM Economic Impact form.*

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The agency has determined that the regulation should stay in effect without change because it is necessary to prevent the spread of plant pests and is effective in its current format. No changes to agency or industry practices have occurred that would necessitate any modifications.

## 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.*

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The agency has determined that there is a continuing need for this regulation in order to provide protection against spread of potentially harmful pests and diseases. Provisions of this regulation require inspection of certain plants, thereby minimizing the spread of plant diseases and the associated negative impact to nursery operations, many of which are small businesses, from the plant disease.

The agency has received several comments from the public concerning Section 40 of the regulation and the ability to grow black currants in Virginia. The agency, in consultation with Virginia Tech Plant Pathologists, has determined that resistant cultivars of *Ribes nigrum* may still harbor White Pine Blister Rust even though they may not show or exhibit symptoms of the disease.

The regulation is not unnecessarily complex. There is no overlap with federal or state law or regulations. The agency has determined that no changes have occurred in the area affected by this regulation since the last periodic review that would make it necessary to amend or repeal the regulation. The agency has determined that that current version of the regulation is consistent with current industry practices and is the least burdensome and least intrusive alternative.

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