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

<b>Agency name</b>	Board of Agriculture and Consumer Services
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	2 VAC 5-315
<b>VAC Chapter title(s)</b>	Virginia Imported Fire Ant Quarantine for Enforcement of the Virginia Pest Law
<b>Date this document prepared</b>	June 24, 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.*

"VDACS" means the Virginia Department 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 with the authority to adopt regulations in accordance with the provisions of Title 3.2 of the Code.

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 2VAC5-315, *Virginia Imported Fire Ant Quarantine for Enforcement of the Virginia Pest Law*, does not exist.

The purpose of this regulation is to slow the artificial spread of the imported fire ant from infested areas to non-infested areas by restricting movement of regulated articles capable of transporting the imported fire ant from regulated localities to unregulated localities. This regulation is the least burdensome approach to slowing the artificial spread of the fire ant, as the regulation only includes those localities in which the imported fire ant has been detected and is established. Without this regulation, the U.S. Department of Agriculture (USDA) Animal and Plant Health Inspection Services (APHIS) may elect to issue a federal quarantine that would encompass all of Virginia and would place restrictions on businesses in non-infested areas of Virginia that are not currently subject to the provisions of this regulation.

**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 reducing the impact of the imported fire ant on landowners, thereby protecting the public's health, safety, and welfare. This 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).*

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The agency recommends that this regulation stay in effect without change, as this regulation is the only viable alternative to slow the artificial spread of the imported fire ant from infested areas to non-infested areas.

### 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 this regulation is necessary in order to continue to slow the artificial spread of the fire ant from infested areas to non-infested areas. The agency has determined that the regulation is not unnecessarily burdensome or complex.

This regulation has an economic impact on businesses, including small businesses, that are located in the regulated area. These businesses are required to survey for imported fire ants and treat regulated articles in an effort to prevent the artificial spread of the imported fire ant. The agency was contacted by the Virginia Loggers Association (VLA) to discuss concerns about the regulation. The VLA requested clarification of the regulated articles, enforcement measures, and how loggers can comply with the quarantine while transporting their products out of the newly quarantined counties. VDACS staff provided guidance on fire ant treatment options, self-inspection through a VDACS-supported compliance agreement, and other steps that the businesses can take to comply with the provisions of the quarantine.

Section 3.2-703 of the Code provides the Commissioner of Agriculture and Consumer Services with the authority to expand or reduce the quarantine area. The regulation was originally promulgated in 2009. Since that time, VDACS has surveyed for the presence of fire ant populations outside of the regulated areas and when detected, treated isolated populations found in these areas. In 2019, survey data indicated that the fire ant had become established outside of the regulated area and it was necessary to expand the regulated area to include additional localities. No significant changes to technology, economic conditions, or other factors have occurred that would necessitate amendments to this regulation.

The imported fire ant is a federally regulated pest. Currently, the regulated areas under the federal imported fire ant quarantine mirror the regulated areas included in Virginia's quarantine. However, without Virginia's regulation in place, USDA-APHIS could elect to issue a federal quarantine that would encompass all of Virginia and would place restrictions on businesses in non-infested areas of Virginia that are not currently subject to the provisions of this regulation. As such, the agency recommends that the regulation stay in effect without change.

