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Fast-Track Regulation Agency Background Document

Agency name	Board of Agriculture and Consumer Services
Virginia Administrative Code (VAC) Chapter citation(s)	2 VAC 5-325
VAC Chapter title(s)	Regulations Governing Pine Shoot Beetle
Action title	Repeal of Regulations Governing Pine Shoot Beetle
Date this document prepared	December 28, 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*.

Brief Summary

Provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.

This regulatory action will repeal Virginia's *Regulations Governing Pine Shoot Beetle* (2 VAC 5-325 *et seq.*).

In 1992, the U.S. Department of Agriculture (USDA) established federal regulations for the pine shoot beetle (*Tomicus piniperda*), following the initial U.S. detection of the beetle in Ohio. The initiation of this regulation at the federal level was in response to the potential for high economic losses caused by the pine shoot beetle in various species of pine trees.

In 2003, under authority granted by Section 3.2-703 of the Tree and Crop Pests Law, the Board of Agriculture and Consumer Services established *Regulations Governing Pine Shoot Beetle* after the pine shoot beetle was found in a Christmas tree planting in Clarke County. The regulation established a quarantine, which was subsequently expanded to Loudoun County in 2010 after the pine shoot beetle was detected in that county. USDA also expanded the federal pine shoot beetle regulation to include Loudoun County at the same time, thereby ensuring that the federal and state pine shoot beetle

regulations were aligned. To reduce the spread of pine shoot beetle, the regulation restricts the movement from regulated localities of those articles that are at risk for moving the pine shoot beetle.

The repeal of the pine shoot beetle quarantine is expected to be non-controversial, as the pine shoot beetle has not caused significant economic impact to affected industries, the pest has not spread throughout the Commonwealth, and the pine shoot beetle can be managed successfully through the implementation of management practices.

Acronyms and Definitions

Define all acronyms used in this form, 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.

"VDACS" means the Virginia Department of Agriculture and Consumer Services.

"USDA" means the United States Department of Agriculture.

Statement of Final Agency Action

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.

On December 11, 2020, the Board authorized staff to take any and all steps necessary to repeal 2 VAC 5-325, *Regulations Governing Pine Shoot Beetle*, through a fast-track regulatory action.

Mandate and Impetus

Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, "mandate" has the same meaning as defined in Executive Order 14 (as amended, July 16, 2018), "a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part."

As required by Virginia Code § 2.2-4012.1, also explain why this rulemaking is expected to be noncontroversial and therefore appropriate for the fast-track process.

The repeal of this regulation is not the result of a directive from the General Assembly, the federal government, or a court.

This regulatory action will repeal the *Regulations Governing Pine Shoot Beetle*. Pest surveys conducted by VDACS indicate that the pine shoot beetle is likely no longer present in the Commonwealth, as the most recent detection of this pest occurred in 2010. In addition, damage caused to pine trees by the pine shoot beetle has resulted in only minimal damage to pine trees, and best management practices implemented by growers mitigate the impact of this pest. VDACS and USDA have determined that the regulation is no longer needed to slow the spread of the pine shoot beetle. The federal pine shoot beetle regulation was rescinded effective November 2, 2020.

The repeal of this regulation is anticipated to be non-controversial because the pine shoot beetle has not caused significant damage to pine trees in Virginia, surveys indicate that the pine shoot beetle is no longer present in Virginia, and, as a result, there is no risk of spread to un-infested areas. In addition, there will be no restrictions on the movement of pine trees, pine logs, and other regulated articles, thereby benefiting the pine tree growers in regulated localities, which must currently comply with requirements of the regulation.

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 and 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 as a policy board with the authority to adopt regulations in accordance with the provision of Title 3.2 of the Code. Section 3.2-703 provides the legal basis for the promulgation and repeal of the regulation.

Purpose

Explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it's intended to solve.

In 2015, USDA met with state departments of agriculture to reassess damages caused by the pine shoot beetle, the rate of spread of this insect, and the impact that the pine shoot beetle had on timber and Christmas tree production. An analysis was conducted, and it was determined that the pine shoot beetle had not spread throughout the country and the damages from this insect pest did not significantly impact the pine, timber, or Christmas tree industries. In 2019, USDA proposed to deregulate the pine shoot beetle, and the federal regulation was repealed effective November 2, 2020. The repeal of Regulations Governing Pine Shoot Beetle will align Virginia's response to the pine shoot beetle with the federal response to this pest and will support the economic welfare of Christmas tree and pine tree growers operating in the currently regulated localities.

Substance

Briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the "Detail of Changes" section below.

This regulatory action will repeal the *Regulations Governing the Pine Shoot Beetle*, 2 VAC 5-325 et seq., and all of the sections contained therein. Repealing the *Regulations Governing Pine Shoot Beetle* will remove the restrictions on Christmas tree and pine tree growers, thereby allowing the unrestricted movement of pine logs, Christmas trees, and other regulated articles out of those counties currently under quarantine.

Issues

Identify the issues associated with the regulatory change, 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, include a specific statement to that effect.

The primary advantage of this regulatory change is elimination of regulatory requirements placed on those businesses that must currently comply with the *Regulations Governing Pine Shoot Beetle*. Businesses required to comply with *Regulations Governing Pine Shoot Beetle* include those that move pine trees and logs and other regulated articles out of the quarantined areas. The primary advantage to the Commonwealth is removal of administrative processes related to ensuring compliance with the regulation.

There are no known disadvantages to this regulatory change for businesses, citizens, or the Commonwealth.

Requirements More Restrictive than Federal

Identify and describe any requirement of the regulatory change which is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements, or no requirements that exceed applicable federal requirements, include a specific statement to that effect.

The federal pine shoot beetle regulation was repealed effective November 2, 2020. This regulatory action will repeal *Regulations Governing Pine Shoot Beetle*, thus there are no requirements more restrictive than applicable federal requirements.

Agencies, Localities, and Other Entities Particularly Affected

Identify any other state agencies, localities, or other entities particularly affected by the regulatory change. "Particularly affected" are those that are likely to bear any identified disproportionate material impact which would not be experienced by other agencies, localities, or entities. "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.

No agency, locality, or entity is particularly affected by the repeal of this regulation.

Economic Impact

Pursuant to § 2.2-4007.04 of the Code of Virginia, identify all specific economic impacts (costs and/or benefits), anticipated to result from the regulatory change. When describing a particular economic impact, specify which new requirement or change in requirement creates the anticipated economic impact. Keep in mind that this is change versus the status quo.

Impact on State Agencies

<p><i>For your agency:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including:</p> <ul style="list-style-type: none"> a) fund source / fund detail; b) delineation of one-time versus on-going expenditures; and c) whether any costs or revenue loss can be absorbed within existing resources 	<p>VDACS expenses related to enforcing provisions of the regulation are funded from general fund appropriations (Fund: 01/Fund Detail: 00).</p> <p>VDACS issues permits and compliance agreements to those entities wishing to ship pine trees, pine logs, and other regulated articles out of the quarantined localities. In addition, VDACS surveys for the pine shoot beetle in quarantined and surrounding localities to determine if the pine shoot beetle is present. However, the need for these permits and compliance agreements in Clarke and Loudoun counties has been minimal; therefore, the cost savings to VDACS will also be minimal.</p> <p>No revenue is generated by this regulation.</p>
<p><i>For other state agencies:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including a delineation of one-time versus on-going expenditures.</p>	<p>None.</p>
<p><i>For all agencies:</i> Benefits the regulatory change is designed to produce.</p>	<p>The repeal of this regulation will eliminate VDACS's administrative responsibilities related to ensuring compliance with the regulation.</p>

Impact on Localities

<p>Projected costs, savings, fees or revenues resulting from the regulatory change.</p>	<p>None.</p>
<p>Benefits the regulatory change is designed to produce.</p>	<p>None.</p>

Impact on Other Entities

<p>Description of the individuals, businesses, or other entities likely to be affected by the regulatory change. If no other entities will be affected, include a specific statement to that effect.</p>	<p>Repeal of the regulation will primarily affect businesses that move pine trees, pine logs, and other regulated articles out of the quarantined area.</p>
<p>Agency's best estimate of the number of such entities that will be affected. Include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that:</p> <ul style="list-style-type: none"> a) is independently owned and operated and; b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million. 	<p>VDACS currently has two compliance agreements with businesses that move regulated articles out of Clarke and Loudoun counties. Although VDACS does not collect data that would enable it to determine whether these businesses are small businesses, VDACS believes that these entities meet the definition of a small business.</p>
<p>All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. Be specific and include all costs including, but not limited to:</p> <ul style="list-style-type: none"> a) projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; 	<p>Affected entities will have no costs associated with the repeal of this regulation.</p>

b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the regulatory change; c) fees; d) purchases of equipment or services; and e) time required to comply with the requirements.	
Benefits the regulatory change is designed to produce.	Repeal of the regulation will reduce the costs to individuals, businesses, and other entities associated with ensuring compliance with provisions of the regulation.

Alternatives to Regulation

Describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in § 2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulatory change.

The alternative considered is the continuation of the regulation. The agency considered not repealing this regulation; however, this would be more burdensome than retaining the regulation. The regulation is no longer needed and requires that pine tree growers and other businesses moving pine logs comply with requirements of the regulation in order to move regulated articles out of the quarantined areas. There are no other alternatives less intrusive or costly than the proposed repeal of this regulation.

Regulatory Flexibility Analysis

Pursuant to § 2.2-4007.1B of the Code of Virginia, describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the regulatory change.

This regulatory action will repeal this regulation; therefore, no less stringent requirements exist.

Public Participation

Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below.

As required by § 2.2-4011 of the Code of Virginia, if an objection to the use of the fast-track process is received within the 30-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall: 1) file notice of the objections with the Registrar of Regulations for

publication in the Virginia Register and 2) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

If you are objecting to the use of the fast-track process as the means of promulgating this regulation, please clearly indicate your objection in your comment. Please also indicate the nature of and reason for your objection to using this process.

The Board of Agriculture and Consumer Services is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal and any alternative approaches, (ii) the potential impacts of the regulation, and (iii) the agency's regulatory flexibility analysis stated in this background document.

The agency will not hold a public hearing on this regulatory proposal. Anyone wishing to submit written comments for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall website at: <https://townhall.virginia.gov>. Comments may also be submitted by mail or email to:

David Gianino, Program Manager
 VDACS Office of Plant Industry Services
 P.O. Box 1163
 Richmond, VA 23218
david.gianino@vdacs.virginia.gov

In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

Detail of Changes

List all regulatory changes and the consequences of the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Use all tables that apply, but delete inapplicable tables.

If an existing VAC Chapter(s) is being amended or repealed, use Table 1 to describe the changes between existing VAC Chapter(s) and the proposed regulation. If existing VAC Chapter(s) or sections are being repealed and replaced, ensure Table 1 clearly shows both the current number and the new number for each repealed section and the replacement section.

Table 1: Changes to Existing VAC Chapter(s)

Current chapter section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
10	None	Definitions	Repeal.
20	None	Regulated Articles	Repeal. Currently regulated articles will no longer be subject to movement restrictions.
30	None	Regulated Areas	Repeal. Items that are currently regulated articles may move from localities currently

			deemed a regulated area without restrictions.
40	None	Conditions governing intra-state movement of regulated articles	Repeal. Items that are currently regulated articles will be able to move intrastate without restrictions.
50	None	Issuance and cancellation of certificates and limited permits	Repeal. Certificates and limited permits will no longer be required for intrastate movement of items that are currently regulated articles.
60	None	Compliance agreements and cancellation	Repeal. Compliance agreements will no longer be required for intrastate movement of items that are currently regulated articles.
70	None	Assembly and inspection of articles	Repeal. Items that are currently regulated articles will no longer be inspected.
80	None	Attachment and disposition of certificates and limited permits	Repeal. Certificates and limited permits will no longer be required to move items that are currently regulated articles, thereby eliminating attachment and disposition requirements.
90	None	Inspection and disposal of regulated articles and pests	Repeal. The repeal of this regulation will eliminate the need for inspectors to inspect and dispose of pine shoot beetles and items that are currently regulated articles.
100	None	Treatments	Repeal. Treatment of items that are currently regulated articles will no longer be required.
110	None	Non-liability of department	Repeal. Statement of non-liability of department will no longer be applicable.
120	None	Revocation of this regulation	Repeal.