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Exempt Action: Final Regulation Agency Background Document

Agency name	Commissioner of Agriculture and Consumer Services
Virginia Administrative Code (VAC) Chapter citation(s)	2 VAC 5-336
VAC Chapter title(s)	Regulations for Enforcement of the Virginia Tree and Crop Pests Law – Spotted Lanternfly Quarantine
Action title	Expand quarantine to Clarke and Warren Counties
Final agency action date	March 17, 2021
Date this document prepared	March 17, 2021

Although a regulatory action may be exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 of the *Code of Virginia*, the agency is still encouraged to provide information to the public on the Regulatory Town Hall using this form. However, the agency may still be required to comply with the Virginia Register Act, 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.

Section 3.2-703 of the Code of Virginia (Code) authorizes the Commissioner of Agriculture and Consumer Services (Commissioner) to extend or reduce areas currently regulated for plant pests. Pursuant to this authority, the Commissioner has expanded the regulated area of the *Regulations for the Enforcement of the Virginia Tree Crop and Pests Law – Spotted Lanternfly Quarantine*, 2 VAC 5-336 *et seq.*, to include the counties of Clarke and Warren due to an increase in spotted lanternfly populations in these localities. Expansion of the regulated area became necessary after surveys conducted by the Virginia Department of Agriculture and Consumer Services (VDACS) indicated that populations of the spotted lanternfly had become established in these localities. Eradication efforts targeted to these populations in the counties of Clarke and Warren are no longer feasible.

Once established, the spotted lanternfly has the potential to spread to non-infested areas, either through natural means or through the movement of infested articles (artificial spread). The *Regulations for the*

Enforcement of the Virginia Tree Crop and Pests Law - Spotted Lanternfly Quarantine is intended to prevent the artificial spread of this pest and establishes steps that businesses and individuals not conducting business can take to ensure that spotted lanternfly is not being artificially spread out of the regulated areas.

Section 40 of the *Regulations for the Enforcement of the Virginia Tree Crop and Pests Law - Spotted Lanternfly Quarantine* establishes the regulated articles, which are articles that pose a risk for spreading the spotted lanternfly and are, therefore, subject to the provisions of the regulation. Section 80 requires any person conducting business to obtain a permit from the Commissioner prior to moving a regulated article out of a regulated area. In order to obtain the permit, a person must complete agency-approved training related to complying with the regulation and identification of the spotted lanternfly. The permit requires businesses to maintain applicable training records and ensure that regulated articles are inspected and free of spotted lanternfly prior to moving such articles from a regulated area to a non-regulated area.

The spotted lanternfly is an invasive pest that feeds on more than 100 plant species, including grapes, pome and stone fruits, maple and walnut trees, hops, and *Ailanthus altissima* (Tree of Heaven). The spotted lanternfly is a threat to Virginia’s grape, apple, hops, and forestry industries and can spread long distances by people who move articles containing spotted lanternfly egg masses, nymphs, or adults. If allowed to spread, this pest could impact Virginia’s agricultural and forestry industries. The spotted lanternfly was initially detected in Winchester in January 2018 and has subsequently spread into Frederick, Clarke, and Warren counties.

Section 3.2-703 of the Code requires that, prior to an extension or reduction of a quarantine, the Commissioner must provide notice in a newspaper with general circulation in the affected area or direct written notice to those concerned. Legal notices were published in local newspapers covering the counties of Clarke, Frederick, and Warren on March 17, 2021. In addition, notification letters regarding expansion of the regulated area were mailed to a variety of businesses in Clarke and Warren counties in February 2021.

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, internal staff review, petition for rulemaking, periodic review, or board decision). “Mandate” is defined as “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.”

Expansion of the regulated area is intended to prevent the artificial spread of the spotted lanternfly from infested areas of the Commonwealth to non-infested areas, thereby reducing the impact of the spotted lanternfly on citizens and businesses. The *Regulations for the Enforcement of the Virginia Tree Crop and Pests Law - Spotted Lanternfly Quarantine* restricts the movement of articles that have the ability to move the spotted lanternfly out of the regulated area.

The quarantine was established in 2019, in response to survey data indicating that the spotted lanternfly had spread from the initial infested site in the City of Winchester and had become established in the City of Winchester and Frederick County. Survey data from 2020 indicate that spotted lanternfly populations have now become established in the counties of Clarke and Warren and these populations pose a risk of further artificial spread. Treatments of these populations were unsuccessful at eradicating the infestations.

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.

Pursuant to Section 3.2-703 of the Code, the Commissioner expanded the regulated area of the *Regulations for the Enforcement of the Virginia Tree Crop and Pests Law - Spotted Lanternfly Quarantine* on March 17, 2021, in an effort to prevent further artificial spread of this pest and protect Virginia's agricultural and natural resources.