



Virginia Department of Planning and Budget **Economic Impact Analysis**

2 VAC 5-318 Rules and Regulations for Enforcement of the Virginia Pest Law – Thousand Cankers Disease

Department of Agriculture and Consumer Services

Town Hall Action/Stage: 6242/10006

May 20, 2024

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia (Code) and Executive Order 19. The analysis presented below represents DPB’s best estimate of the potential economic impacts as of the date of this analysis.¹

Summary of the Proposed Amendments to Regulation

As a result of a 2022 periodic review,² the Board of Agricultural and Consumer Services (Board) proposes to repeal this regulation pertaining to the quarantine related to Thousand Cankers Disease (TCD) because such requirements are no longer necessary to slow the spread of the disease.

Background

As explained in the Agency Background Document (ABD), TCD is native to the western United States and primarily affects black walnut trees.³ The Virginia Department of Agriculture and Consumer Services (VDACS) first received reports of black walnut trees exhibiting symptoms of TCD in Chesterfield County in 2011; additional VDACS surveys revealed that TCD was also present in Henrico County and the City of Richmond. Accordingly, this regulation

¹ Code § 2.2-4007.04 requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the analysis should include but not be limited to: (1) the projected number of businesses or other entities to whom the proposed regulatory action would apply, (2) the identity of any localities and types of businesses or other entities particularly affected, (3) the projected number of persons and employment positions to be affected, (4) the projected costs to affected businesses or entities to implement or comply with the regulation, and (5) the impact on the use and value of private property.

² See <https://townhall.virginia.gov/l/ViewPReview.cfm?PRid=2177>.

³ See ABD, page 1:

https://townhall.virginia.gov/l/GetFile.cfm?File=48\6242\10006\AgencyStatement_VDACS_10006_v1.pdf.

was originally promulgated in 2011 to establish quarantine requirements to restrict the spread of TCD; additional localities were added to the quarantine in 2012.⁴

The regulation specifies the list of regulated articles, the localities covered by the quarantine requirements, the conditions governing the intrastate movement of regulated articles, the issuance of certifications and permits for the movement of regulated articles, compliance agreements, the prohibition on entry of regulated articles into Virginia from certain other states. The regulation (section 140) also specifies that this regulation may be revoked by the Board when the Board is satisfied that the need for this quarantine no longer exists.

VDACS reports that since 2012, there have been no significant TCD detections in the Commonwealth, and that several trees that were positive for TCD have since recovered from the disease.⁵ VDACS' surveys for TCD indicate that there are limited populations of the insect that spreads TCD, minimal levels of the pathogen, and the impact that the disease has on trees is primarily dependent on drought or other environmental stressors. Thus, the Board proposes to repeal this regulation.

Estimated Benefits and Costs

Repealing this regulation would primarily benefit businesses that move walnut logs, trees, and other products from or through localities currently under quarantine. These businesses currently have to obtain a certificate or limited permit from a VDACS inspector, as required by section 70 of the regulation; once the regulation is repealed, such inspection would no longer be required. As there is no cost to the business for VDACS to conduct an inspection and issue a limited permit, or to enter into a compliance agreement, there would be no cost savings from the elimination of any permit fees. However, regulants would save time from not having to wait for an inspection or to receive a permit.

VDACS has also entered into compliance agreements with two entities (a landscaping supply business and a local government) to regulate the movement of walnut bark and hardwood mulch from an infested area to a non-infested area. The compliance agreements require that commercial shipments of walnut plants and plant parts be chipped and composted using a

⁴ See <https://townhall.virginia.gov/l/ViewStage.cfm?stageid=6080>, which created the regulation, and <https://townhall.virginia.gov/l/ViewAction.cfm?actionid=3759> and <https://townhall.virginia.gov/l/ViewAction.cfm?actionid=3839>, which expanded the quarantine.

⁵ ABD, page 3.

specific process, within the quarantined area, before the mulch could be shipped within the state. This process entails heating and composting over at least eight days and requires heavy equipment to move and turn the compost piles to ensure proper aeration and that a temperature of 140-degrees Fahrenheit is reached and maintained. If a business had the required equipment and the necessary space, VDACS estimates that it could cost \$300-\$600 for the labor and gas required to process a minimum compost pile of 200 cubic yards, which translates to \$4.48-\$8.96 per three-cubic-yard shipment of mulch. These costs would be eliminated by the repeal of this regulation. The compliance agreement also requires these entities to issue a certificate for each shipment, which states that the shipment meets the requirements of this regulation, and to maintain a record of all intrastate shipments for two years. These requirements would all be removed once the regulation is repealed.

Lastly, although shipments would no longer be inspected, VDACS reports that they will continue surveying for TCD even after the regulation is repealed. This would limit any future costs that may arise from a possible resurgence of TCD.

Businesses and Other Entities Affected

As mentioned previously, repealing this regulation would primarily benefit businesses that transport black walnut trees, including parts and products, out of or through quarantined localities; VDACS does not have data on the number of such businesses. Repealing this regulation would also benefit Yard Works LLC (Moseley, VA) and Hanover County, the two entities currently under a compliance agreement with VDACS, which carries specific requirements for the treatment of mulch before it can be transported outside the county. An adverse impact is indicated if there is any increase in net cost or reduction in net benefit for any entity, even if the benefits exceed the costs for all entities combined.⁶ Repealing this regulation would not generate any increase in net cost or reduction in net benefit. Thus, an adverse impact is not indicated.

⁶ Statute does not define “adverse impact,” state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation. As a result, DPB has adopted a definition of adverse impact that assesses changes in net costs and benefits for each affected Virginia entity that directly results from discretionary changes to the regulation.

Small Businesses⁷ Affected:⁸

The proposed amendments would not adversely affect small businesses.

Localities⁹ Affected¹⁰

Hanover County, which has a compliance agreement with VDACS for the transportation of walnut bark and mulch, would benefit from not having to treat the mulch or inspect and certify shipments. Other localities that were included in the quarantine may benefit indirectly to the extent that repealing the regulation reduces costs to local businesses that transport black walnut trees, including parts or products. This includes the entire counties of Chesterfield, Fairfax, Goochland, Hanover, Henrico, King and Queen, King William, New Kent, Powhatan, and Prince William, and the entire cities of Colonial Heights, Fairfax, Falls Church, Manassas, Manassas Park, and Richmond.

Projected Impact on Employment

The repeal of this regulation does not appear to affect total employment.

Effects on the Use and Value of Private Property

The proposed amendments do not appear to affect the value of private property. Real estate development costs would not be affected.

⁷ Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as “a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.”

⁸ If the proposed regulatory action may have an adverse effect on small businesses, Code § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to Code § 2.2-4007.1, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.

⁹ “Locality” can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

¹⁰ Virginia Code § 2.2-4007.04 defines “particularly affected” as bearing disproportionate material impact.