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

<b>Agency name</b>	Commissioner of Agriculture and Consumer Services
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	2 VAC 5-318
<b>VAC Chapter title(s)</b>	Rules and Regulations for Enforcement of the Virginia Pest Law – Thousand Cankers Disease
<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.*

"TCD" means Thousand Cankers Disease.

## 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. Section 3.2-703 of the Code authorizes the Board to quarantine the Commonwealth or any portion thereof when it determines that such action is necessary to prevent or retard the spread of a pest into, within, or from the Commonwealth. Section 3.2-703 of the Code also authorizes the Commissioner of Agriculture and Consumer Services (Commissioner) to extend or reduce areas currently regulated for plant pests.

### 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.*

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Thousand Cankers Disease (TCD) is a disease complex that is carried by the Walnut Twig Beetle and impacts walnut trees. If a Walnut Twig Beetle attacks a walnut tree, it causes the tree to become infected with TCD, which eventually may kill the tree. The quarantine restricts the movement of these plants and plant parts in order to slow the spread of this disease. The agency has determined that these requirements are no longer necessary as TCD has spread minimally and has not had a major impact on walnut tree populations in Virginia since its original detection in Virginia in 2011. As the disease has not impacted walnut tree populations in Virginia, the quarantine established in this regulation is no longer needed.

### 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.*

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The agency received no public comment in response to the Notice of Periodic Review published on August 15, 2022, and did not form an informal advisory group for the purpose of assisting 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.*

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This regulation is no longer necessary for the protection of public health, safety, and welfare because TCD has only spread minimally and has not had a major impact on walnut tree populations in Virginia since its detection in 2011.

### 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 it is now appropriate to repeal this regulation because TCD has only spread minimally and has not had a major impact on walnut tree populations in Virginia since its detection in 2011.

### **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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This regulation was promulgated to help prevent the artificial spread of TCD to uninfested areas of the Commonwealth by regulating the movement of the articles that are capable of transporting the disease. The agency has determined that this regulation should be repealed because TCD has only spread minimally and has not had a major impact on walnut tree populations in Virginia since its original detection in Virginia in 2011. As the disease is not spreading and has not had an impact on walnut trees in Virginia, the quarantine is unnecessary. The repeal of this regulation will eliminate any cost associated with compliance with the requirements established in the regulation.

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