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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 include certain counties and cities in the northern and western regions of Virginia
Final agency action date	July 8, 2022
Date this document prepared	July 9, 2022 Updated on August 18, 2022, to use new TH-09 template

This information is required for executive branch review pursuant to 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. In addition, this information is required by the Virginia Registrar of Regulations pursuant to the Virginia Register Act (§ 2.2-4100 et seq. of the Code of Virginia). Regulations must conform to 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*.

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 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 Enforcement of the Virginia Tree and Crop Pests Law – Spotted Lanternfly Quarantine*, 2 VAC 5-336 et seq., to include the cities of Buena Vista, Charlottesville, Harrisonburg, Lexington, Lynchburg, Manassas, Manassas Park, Staunton, and Waynesboro and the counties of Albemarle, Augusta, Carroll, Page, Prince William, Rockbridge, Rockingham, Shenandoah, and Wythe 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 above listed cities and counties were unsuccessful in eradicating those populations, and eradication is 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 Enforcement of the Virginia Tree and Crop 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 must take to ensure that spotted lanternfly is not being artificially spread out of the regulated areas.

Section 40 of the *Regulations for Enforcement of the Virginia Tree and Crop Pests Law - Spotted Lanternfly Quarantine* establishes the regulated articles, which are articles that pose a risk for spreading the spotted lanternfly and 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 the 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 the 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 as a result of people moving 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 the cities of Buena Vista, Charlottesville, Harrisonburg, Lexington, Lynchburg, Manassas, Manassas Park, Staunton, and Waynesboro and the counties of Albemarle, Augusta, Carroll, Clarke, Frederick, Page, Prince William, Rockbridge, Rockingham, Shenandoah, Warren, and Wythe.

Section 3.2-703 of the Code of Virginia 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. In an effort to communicate to impacted stakeholders, individuals, and localities, legal notices were published in local newspapers with coverage in the expanded area (cities of Buena Vista, Charlottesville, Harrisonburg, Lexington, Lynchburg, Manassas, Manassas Park, Staunton, and Waynesboro and counties of Albemarle, Augusta, Carroll, Page, Prince William, Rockbridge, Rockingham, Shenandoah, and Wythe) during the time period covering July 3-16, 2022. In addition, notification letters regarding expansion of the regulated area were mailed to impacted stakeholders; industry groups; organizations and trade associations; other state agencies; and local government, including boards of supervisors, city managers, and county administrators, in the expanded area during the time period of May 2022 to June 2022.

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). For purposes of executive branch review, “mandate” has the same meaning as defined in the ORM procedures, “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 Enforcement of the Virginia Tree and Crop*

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 *Regulations for Enforcement of the Virginia Tree and Crop Pests Law - Spotted Lanternfly 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 indicated that populations had become established in the counties of Clarke and Warren, and these counties were added to the regulated area in March 2021. Treatments of these populations were unsuccessful at eradicating the infestations. Survey data from 2021 and 2022 indicate that populations of the spotted lanternfly have become established in the cities of Buena Vista, Charlottesville, Harrisonburg, Lexington, Lynchburg, Manassas, Manassas Park, Staunton, and Waynesboro and the counties of Albemarle, Augusta, Carroll, Page, Prince William, Rockbridge, Rockingham, Shenandoah, and Wythe. Treatments of these populations were unsuccessful at eradicating the infestations. Additionally, populations in these localities are in close proximity to high risk transportation pathways that may increase the risk of further artificial spread, unless the quarantine is expanded.

Pursuant to § 3.2-703 of the Code of Virginia, the Commissioner expanded the regulated area of the *Regulations for Enforcement of the Virginia Tree and Crop Pests Law - Spotted Lanternfly Quarantine* on July 8, 2022, in an effort to prevent further artificial spread of this pest and protect Virginia's agricultural and natural resources.

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 July 8, 2022, the Commissioner of Agriculture and Consumer Services adopted amendments expanding the regulated area of the *Regulations for Enforcement of the Virginia Tree and Crop Pests Law – Spotted Lanternfly Quarantine*, 2 VAC 5-336 *et seq.*