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## Periodic Review and Small Business Impact Findings Where Result is "Retain the Regulation As Is"

<b>Agency name</b>	Board of Agriculture and Consumer Services
<b>Virginia Administrative Code (VAC) citation</b>	2 VAC 5-315
<b>Regulation title</b>	Virginia Imported Fire Ant Quarantine for Enforcement of the Virginia Pest Law
<b>Date</b>	March 23, 2015

This information is required pursuant to Executive Order 17 (2014).

### Legal basis

*Please identify the state and/or federal legal authority for the regulation, including: 1) the most relevant law and/or regulation; and 2) promulgating entity, i.e., agency, board, or person.*

Section 3.2-109 of the Code of Virginia (Code) establishes the Board of Agriculture and Consumer Services (Board) as a policy board with the authority 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 such action is necessary to prevent or retard the spread of a pest into, within, or from the Commonwealth.

Section 3.2-704 of the Code authorizes the Board to prohibit the importation of any regulated article from any locality of other states, territories, or countries into the Commonwealth when it has good reason to believe in the existence of infested regulated articles in localities in other states, territories, or countries, or that conditions exist that, in the judgment of the Board, render the importation of such regulated articles from such localities a menace to the health of the Commonwealth.

### Alternatives

*Please describe all viable alternatives for achieving the purpose of the existing regulation that have been considered as part of the periodic review process. Include an explanation of why such alternatives were rejected and why this regulation is the least burdensome alternative available for achieving the purpose of the regulation.*

A viable alternative to 2VAC5-315 et seq., *Virginia Imported Fire and Quarantine for Enforcement of the Virginia Pest Law*, does not exist.

The purpose of this regulation is to slow the artificial spread of the fire ant from infested areas to non-infested areas by restricting the movement of regulated articles from regulated localities to unregulated localities. This regulation is the least burdensome approach to slowing the artificial spread of the fire ant, as the regulation only includes those localities in which the fire ant has been detected. Without this regulation, the U.S. Department of Agriculture, Animal and Plant Health Inspection Service may elect to issue a federal quarantine that would encompass all of Virginia and would place restrictions on businesses in non-infested areas of Virginia that are not currently subject to the provisions of this regulation.

### Public comment

*Please summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and provide the agency response. Please indicate if an informal advisory group was formed for purposes of assisting in the periodic review.*

The agency did not receive any comments during the public comment period following the publication of the Notice of Periodic Review. An informal advisory group was not formed for the purpose of assisting in the periodic review.

### Effectiveness

*Please indicate whether the regulation meets the criteria set out in Executive Order 17 (2014), e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable.*

The regulation assists in reducing the impact of the fire ant on landowners, thereby protecting the public's health and welfare. This regulation is clearly written and easily understood.

### Result

*Please state that the reason why the agency is recommending that the regulation should stay in effect without change.*

The agency is recommending that this regulation stay in effect without change.

### Small business impact

*In order to minimize the economic impact of regulations on small business, please include, pursuant to § 2.2-4007.1 E and F, a discussion of the agency's consideration of: 1) the continued need for the regulation; 2) the nature of complaints or comments received concerning the regulation from the public; 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, include a discussion of the basis for the agency's determination to retain the regulation as is, consistent with the stated objectives of applicable law, to minimize the economic impact of regulations on small businesses.*

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The agency has determined that this regulation is necessary in order to continue to slow the artificial spread of the fire ant from infested areas to non-infested areas. This regulation has an economic impact on small businesses that are located in the regulated area. These small businesses are required to survey for fire ants and treat regulated articles in an effort to prevent the artificial spread of the fire ant. The agency has determined that the regulation is not unnecessarily burdensome or complex. The agency has not received any complaints or comments from the public regarding the regulation.

Section 3.2-703 of the Code provides the Commissioner of Agriculture and Consumer Services with the authority to expand or reduce a quarantine's regulated area. The regulation was established in 2009 and has not been expanded since that time, as fire ant populations outside of the quarantined area have remained at low levels indicating that the regulation is succeeding at reducing the artificial movement of the fire ant. No significant changes to technology, economic conditions, or other factors have occurred that would necessitate amendments to this regulation.

The fire ant is a federally regulated pest. Currently, the regulated areas under the federal fire ant quarantine mirror the regulated areas included in Virginia's quarantine. Without this regulation, the U.S. Department of Agriculture, Animal and Plant Health Inspection Service may elect to issue a federal quarantine that would encompass all of Virginia and would place restrictions on businesses in non-infested areas of Virginia that are not currently subject to the provisions of this regulation. As such, the agency recommends that the regulation stay in effect without change.