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

Agency name	Board of Agriculture and Consumer Services
Virginia Administrative Code (VAC) citation	2 VAC 5-330
Regulation title	Rules and Regulations for the Enforcement of the Virginia Pest Law-Virginia Gypsy Moth Quarantine
Date	April 15, 2016

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 of Virginia authorizes the Board to adopt a quarantine when the Board determines that such action is necessary to prevent or retard the spread of a pest into, within, or from 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 2 VAC 5-330 does not exist. This regulation establishes the Virginia Gypsy Moth Quarantine, which is intended to prevent or retard the spread of the gypsy moth from infested areas to non-infested areas. If this regulation were not in place, the U.S. Department of Agriculture Animal and Plant Health Inspection Service (USDA-APHIS) would likely issue a federal, state-wide quarantine. The Virginia Gypsy Moth Quarantine places restrictions on the movement of regulated articles only from those areas of Virginia that have been identified as being infested with the gypsy moth. If USDA-APHIS implements a state-wide quarantine, restrictions will be placed on the interstate movement of regulated articles from the entire state, including areas of the state that are not infested with the gypsy moth, placing an unnecessary burden on the citizens and businesses located in those non-infested areas. Additionally, a federal, state-wide quarantine would allow the unrestricted movement of regulated articles within the state, thereby increasing the potential for the gypsy moth to spread to non-infested areas of Virginia.

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 received no comments during the public comment period and did not form an informal advisory group to assist in this 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.

This regulation is necessary for the protection of the economic welfare of Virginia's nursery and timber industries because it is intended to prevent or retard the spread of the gypsy moth in the event of an infestation in Virginia. If this regulation were not in place, USDA-APHIS would issue a federal, state-wide quarantine, which would place restrictions on businesses in non-infested areas of Virginia. Many nurseries and timber operations in Virginia are small businesses, and this regulation ensures that businesses in non-infested areas are not subject to the quarantine. The regulations are clearly written and easy to understand.

Result

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

The agency recommends that the regulation stay in effect without change. If the regulation were not in place, in the event of a gypsy moth infestation, USDA-APHIS would issue a federal,

state-wide quarantine that would restrict interstate commerce for businesses outside the affected area. A federal quarantine would also fail to place any restrictions on intrastate commerce, which could result in the spread of gypsy moths within the Commonwealth.

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.

The agency has determined that there is a continued need for this regulation. This regulation requires that nurseries and timber operations located in infested areas obtain inspections and certifications for regulated articles before these articles may be moved from regulated to non-regulated areas. If this regulation were not in place, USDA-APHIS would issue a federal, state-wide quarantine, which would place restrictions on businesses in non-infested areas of Virginia. Many nurseries and timber operations in Virginia are small businesses, and this regulation ensures that businesses in non-infested areas are not subject to the quarantine. The regulation was last amended in 2012. In the period since this regulation was last amended, there have been no significant changes to technology, economic conditions, or other factors that would necessitate modifications to the regulation. There have been no comments or complaints received from the public regarding this regulation. The regulation is not complex and does not overlap, duplicate, or conflict with federal or state law or regulation. The agency recommends that the regulations stay in effect without change.