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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 5-325
Regulation title	Regulations Governing Pine Shoot Beetle
Date	April 12, 2017

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 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.

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.

This regulation was created in 2003 to establish a quarantine to limit the movement of articles that present the risk of spread of the pine shoot beetle (PSB) after the PSB was first detected in a Christmas tree planting in Clarke County, Virginia. The quarantine was expanded to include Loudoun County in

2010 after a PSB was found in a trap in that county. No additional PSBs have been detected in Virginia since 2010. The quarantine prohibits the movement of the following pine products from the regulated area: bark nuggets (including bark chips); Christmas trees; logs with bark attached; lumber with bark attached; nursery stock; raw pine materials for wreaths and garlands; and stumps as well as any article, product, or means of conveyance which, in the determination of the Commissioner of the Department of Agriculture and Consumer Services, presents the risk of spread of the PSB. The agency determined that these requirements are not unnecessarily burdensome and provide an important means to prevent the artificial spread of this pine pest. Therefore, alternatives to this regulation were rejected.

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.

No comments were received during the public comment period that followed the publication of the Notice of Periodic Review that ended on February 27, 2017. An informal advisory group was not formed for the purpose of assisting 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 public health, safety, and welfare because it prevents the artificial spread of PSBs and is clearly written and easily understandable.

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 because it is necessary to prevent the artificial spread of the PSB and is effective in its current format. No changes to agency or industry practices have occurred that would necessitate any modifications to this regulation.

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 purpose of this regulation is to delay the long distance (artificial) spread of the PSB from infested areas to non-infested areas in order to reduce its impact on Virginia landowners, including Christmas tree growers, many of whom are small business owners, and forest users. The agency has determined that this regulation should be retained in order to provide protection against the artificial spread of the PSB.

There have been no complaints from the public concerning the regulation. This regulation does not overlap, duplicate, or conflict with federal or state law or regulations. The agency has determined that no changes have occurred in the area affected by this regulation since the last periodic review that would make it necessary to amend or repeal the regulation. The agency has determined that that current version of this regulation is consistent with current industry practices and is the least burdensome and least intrusive alternative.