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

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| <b>Agency name</b>  | Board of Agriculture and Consumer Services  |
| <b>Virginia Administrative Code (VAC) Chapter citation(s)</b> | 2 VAC5-330  |
| <b>VAC Chapter title(s)</b>                                   | Rules and Regulations for Enforcement of the Virginia Pest Law - Virginia Gypsy Moth Quarantine |
| <b>Date this document prepared</b>                            | October 8, 2020   |

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1VAC7-10), 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.*

### 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 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.

### 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.*

A viable alternative to 2 VAC 5-330 *et seq.*, *Rules and Regulations for Enforcement of the Virginia Pest Law - Virginia Gypsy Moth Quarantine*, 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

*Summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and provide the agency 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.*

| Commenter                              | Comment  | Agency response  |
|--|--|--|
| Virginia Farm Bureau Federation (VFBF) | We believe the current regulations are sufficient. VFBF has no recommended changes for 2VAC5-330 but reserves the right to provide additional comment should regulatory changes be proposed. | The agency appreciates the commenter's feedback and participation in the periodic review of this regulation. |

The agency did not form an informal advisory group to assist 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 Executive Order 14 (as amended, July 16, 2018), including why the regulation is (a) necessary for the protection of public health, safety, and welfare, and (b) 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. If this regulation were not in place, USDA-APHIS would issue a federal quarantine over the entire state of Virginia, 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.

### 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).*

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The agency is recommending that this regulation stay in effect without change. If the regulation were not in place, USDA-APHIS would issue a federal quarantine over the entire state of Virginia that would restrict interstate commerce for businesses outside of 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

*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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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 nonregulated areas. If this regulation were not in place, USDA-APHIS would issue a federal, statewide 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 2017. 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 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.

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