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Periodic Review and Small Business Impact Review Report of Findings

Agency name	Board 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
Date this document prepared	October 2, 2023

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), 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, 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*.

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.

"Board" means the Board of Agriculture and Consumer Services.

"VDACS" means the Virginia Department of Agriculture and Consumer Services.

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 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 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 5-336, *Regulations for Enforcement of the Virginia Tree and Crop Pests Law - Virginia Spotted Lanternfly Quarantine*, does not exist. There are no effective management tools available to VDACS that will have a significant impact on reducing the population of spotted lanternfly in Virginia. Currently, there is no lure for spotted lanternfly and, pesticide treatments are not an effective means of preventing the spread of widespread, low-level populations of this pest.

This regulation establishes the Virginia Spotted Lanternfly Quarantine, which is intended to prevent or retard the spread of the spotted lanternfly from infested areas to non-infested areas. If this quarantine was not in place, regulated articles capable of transporting viable life stages of the spotted lanternfly would be allowed to freely move to uninfested areas of the Commonwealth or other states, thereby allowing the invasive insect to spread. Reduction in the artificial spread of spotted lanternfly, an invasive insect that is a threat to Virginia's grape, apple, hops, and forestry industries, will reduce the crop loss or pest management costs that could be associated with a spotted lanternfly infestation. The quarantine requires that any business that moves listed regulated articles from the quarantined localities to uninfested areas must inspect those articles, ensure they are not infested with spotted lanternfly, remove or treat any spotted lanternfly life stages found on those articles, and obtain a spotted lanternfly permit from VDACS. As the quarantine is limited to named, infested localities and does not include the entire state, the regulation is the least burdensome alternative for achieving a reduction in the spread of the spotted lanternfly.

Public Comment

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

The agency received no public comment in response to the Notice of Periodic Review published on August 14, 2023. An informal advisory group was not formed for the purpose of assisting 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 the ORM procedures, 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 supports the economic welfare of the Commonwealth by protecting the public from damage caused by the spotted lanternfly. The spotted lanternfly can cause damage to Virginia’s agricultural and forestry industries, as well as native plant life. In 2018, the known distribution of spotted lanternfly in Virginia was limited to approximately three-square miles. In 2019, the distribution increased to 11 square miles, and in 2020, the distribution had increased to approximately 35 square miles. As of 2023, the estimated distribution of spotted lanternfly in Virginia is approximately 337 square miles. While the distribution of the spotted lanternfly has increased in Virginia since 2018, the quarantine has likely slowed the rate at which the spotted lanternfly has spread.

The quarantine provides protections to Virginia’s vineyards, as the spotted lanternfly causes damage to grape vines. The spotted lanternfly can significantly impact the photosynthetic capability of wine grapes, reducing fruit yield and quality and damaging the vines’ overall health.

The regulation is clearly written and easy to understand. The regulation clearly lists which types of articles are subject to the regulations and plainly lists each county and city that is subject to the quarantine. It also provides the conditions that a person or business must meet in order to move regulated articles out of quarantine zones in plain language that is easily understood.

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).

If the result of the periodic review is to retain the regulation as is, complete the ORM Economic Impact form.

The agency is recommending that this regulation stay in effect without change because the quarantine has likely slowed the rate at which the spotted lanternfly has spread in 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.

The agency has determined that there is a continued need for this regulation. This regulation requires that businesses located in infested areas (quarantined localities) obtain a spotted lanternfly permit from VDACS and ensure that regulated articles are inspected and found to be free from spotted lanternfly life stages prior to moving those regulated articles from regulated to nonregulated areas. If this regulation was not in place, persons conducting business in infested areas would be allowed to freely move articles capable of transporting spotted lanternfly life stages to non-infested areas of Virginia, thereby resulting in an increased rate at which the spotted lanternfly spreads to uninfested areas. The agency has determined that it is appropriate for this regulation to apply to all businesses in infested areas, as

exceptions for small businesses would undermine the purpose of the quarantine and could contribute to the spread of spotted lanternfly.

The regulation was established in 2019 and expanded in 2021 and 2022. In the period since this regulation was last amended, there have not been any significant changes to technology, economic conditions, or other factors that would necessitate modifications to the regulation. The agency has not received any comments or complaints from the public, including small businesses, regarding this regulation.

The regulation is not complex and does not overlap, duplicate, or conflict with federal or state law or regulation.

