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Fast-Track Regulation Agency Background Document

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
Action title	Repeal of 2 VAC 5-336
Date this document prepared	July 23, 2024

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*.

Brief Summary

Provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.

This regulatory action will repeal Virginia's *Rules and Regulations for Enforcement of the Virginia Tree and Crop Pests Law – Spotted Lanternfly Quarantine* (2 VAC 5-336 et seq.).

The Spotted Lanternfly was first found in Virginia in 2018 in Frederick County. In 2019, Virginia's initial regulation for the spotted lanternfly was established, which designated the City of Winchester and Frederick County as regulated areas. The regulation restricts the movement of life stages of the spotted lanternfly and articles capable of transporting the spotted lanternfly. The regulated areas have been expanded twice since that time: once in 2021 and again in 2022. Currently, the regulation establishes 22 localities as regulated areas that are under quarantine, and there are an additional 20 localities in which populations of spotted lanternfly have become established.

When the agency established the regulation in 2019, there was limited information on the spotted lanternfly. Over the past five years, damage from the spotted lanternfly to agricultural and forest resources has been minimal. Since spotted lanternfly was first detected, Pennsylvania State University completed a long-term forest impact study that found that spotted lanternfly, when introduced into diverse forests, did not negatively affect forest health and most trees were able to withstand feeding and did not succumb to the pest pressure of spotted lanternfly. In addition, treatment options have been developed since 2019 that can be used to mitigate the impacts of spotted lanternfly. There may be potential impacts to the wine industry; however, the risks and negative impacts that spotted lanternfly poses to vineyards have not been observed in Virginia and vineyard managers now have treatment options.

As a result of the spotted lanternfly’s expanding presence throughout Virginia and limited impacts to Virginia forestry and agriculture, VDACS has determined that the regulation has not been successful in slowing the rate at which the spotted lanternfly spreads in Virginia and the Board of Agriculture and Consumer Services has determined that the regulation should be repealed.

Acronyms and Definitions

Define all acronyms used in this form, 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.

“SLF” means the invasive insect spotted lanternfly (*Lycorma delicatula*).

“USDA” means the United States Department of Agriculture.

“VDACS” means the Virginia Department of Agriculture and Consumer Services.

Statement of Final Agency Action

Provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) the name of the agency taking the action; and 3) the title of the regulation.

On May 23, 2024, the Board authorized staff to take any and all steps necessary to repeal 2 VAC 5-336, *Rules and Regulations for Enforcement of the Virginia Tree and Crop Pests Law – Spotted Lanternfly Quarantine*, through a fast-track regulatory action.

Mandate and Impetus

Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, “mandate” has the same meaning as defined in the ORM procedures, “a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part.”

Consistent with Virginia Code § 2.2-4012.1, also explain why this rulemaking is expected to be noncontroversial and therefore appropriate for the fast-track rulemaking process.

The first detection of spotted lanternfly in Virginia occurred in Frederick County in 2018. In 2019, *Rules and Regulations for Enforcement of the Virginia Tree and Crop Pests Law – Spotted Lanternfly Quarantine* (regulation) was established, designating the City of Winchester and Frederick County as

regulated areas and requiring businesses in these areas to obtain a permit and conduct inspections of regulated articles prior to moving such articles out of the regulated area. The intent of the regulation was to prevent the human-assisted movement of the spotted lanternfly from infested to un-infested areas. The regulated areas of the regulation were expanded in 2021 and again in 2022 and now include 22 localities. There are an additional 20 localities known to have spotted lanternfly populations. The localities with confirmed populations of spotted lanternfly represent approximately one-third of the Commonwealth. VDACS has determined that the regulation's restrictions on the movement of regulated articles have not been successful in preventing or slowing the spread of SLF and, as such, has determined that it is appropriate to repeal this regulation.

VDACS does not expect the repeal of this regulation to be controversial, as it will eliminate regulatory requirements that were ineffective at slowing the spread of SLF in Virginia.

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 and 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 establishes the Board as a policy board and authorizes the Board to adopt and modify 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 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.

Purpose

Explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it is intended to solve.

The first detection of spotted lanternfly in Virginia occurred in Frederick County in 2018. In 2019, the spotted lanternfly regulation was established, designating the City of Winchester and Frederick County as regulated areas and required inspections of regulated articles to ensure SLF was not on such articles, thereby preventing the movement of the spotted lanternfly from infested areas. The regulated areas were expanded in 2021 and again in 2022, and the regulation now establishes that 22 localities are regulated areas and are under quarantine. An additional 20 localities are known to have spotted lanternfly populations.

VDACS surveys for populations of SLF and conducts SLF treatments in an attempt to reduce the spread of this invasive insect. Known populations of SLF continue to grow and expand, and new infestations have become established long distances from the regulated areas through human-assisted movement, despite the regulation having been in place since 2019.

SLF can move from infested to un-infested areas through the inadvertent spread by humans. Human-assisted spread of SLF occurs when adult spotted lanternflies and nymphs hitchhike on automobiles, construction equipment, railcars, shipping containers, plants, stone products, etc. Human-assisted spread of SLF typically occurs along major transportation corridors such as interstate highways and railroads. It is estimated that approximately 60 percent of Virginia's newly detected SLF populations

are associated with the railroad, particularly railcars coming from infested areas north of Virginia and moving southbound.

The goal of the repeal of the regulation is to remove the regulatory burden on persons within the regulated areas since the regulation has not been effective at slowing the spread of SLF in Virginia. The regulation requires that businesses in a regulated area obtain a permit and conduct inspections of regulated articles before moving such articles out of the regulated area to ensure that the regulated article is free from SLF. The requirements of the regulation have not prevented the spread of SLF from the infested areas, and, therefore, repeal of the regulation will benefit those persons moving regulated articles in the regulated area, including supporting their economic welfare by eliminating any time or financial expenditures associated with inspecting regulated articles, while having little or no impact on the rate at which SLF moves to un-infested areas of the Commonwealth.

Substance

Briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the "Detail of Changes" section below.

This regulatory action will repeal the *Rules and Regulations for Enforcement of the Virginia Tree and Crop Pests Law – Spotted Lanternfly Quarantine, 2 VAC5-336 et seq.*, which will eliminate restrictions on the movement of regulated articles out of the quarantined localities.

Issues

Identify the issues associated with the regulatory change, including: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, include a specific statement to that effect.

The primary advantage of this regulatory change is elimination of regulatory burden placed on those businesses within the regulated areas that must currently comply with the *Rules and Regulations for Enforcement of the Virginia Tree and Crop Pests Law – Spotted Lanternfly Quarantine*. The primary advantage to the Commonwealth is removal of administrative processes related to ensuring compliance with the regulation.

There are no known disadvantages to this regulatory change for businesses, citizens, or the Commonwealth, as the repeal of this regulation is not expected to impact the rate at which SLF spreads in the Commonwealth.

Requirements More Restrictive than Federal

Identify and describe any requirement of the regulatory change which is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements, or no requirements that exceed applicable federal requirements, include a specific statement to that effect.

There is no federal regulation for spotted lanternfly. This regulatory action will repeal *Rules and Regulations for Enforcement of the Virginia Tree and Crop Pests Law – Spotted Lanternfly Quarantine*, thus the regulatory action will result in no requirements being more restrictive than federal regulation.

Agencies, Localities, and Other Entities Particularly Affected

Consistent with § 2.2-4007.04 of the Code of Virginia, identify any other state agencies, localities, or other entities particularly affected by the regulatory change. Other entities could include local partners such as tribal governments, school boards, community services boards, and similar regional organizations. “Particularly affected” are those that are likely to bear any identified disproportionate material impact which would not be experienced by other agencies, localities, or entities. “Locality” can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.

Once repealed, state agencies, localities, and other entities will no longer be required to comply with provisions of *Rules and Regulations for Enforcement of the Virginia Tree and Crop Pests Law – Spotted Lanternfly Quarantine*, including the requirement to obtain a permit, conduct training, and inspect regulated articles.

Economic Impact

Consistent with § 2.2-4007.04 of the Code of Virginia, identify all specific economic impacts (costs and/or benefits), anticipated to result from the regulatory change. When describing a particular economic impact, specify which new requirement or change in requirement creates the anticipated economic impact. Keep in mind that this is the proposed change versus the status quo.

Impact on State Agencies

<p><i>For your agency:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including: a) fund source / fund detail; b) delineation of one-time versus on-going expenditures; and c) whether any costs or revenue loss can be absorbed within existing resources</p>	<p>VDACS anticipates that there will be no costs or revenue loss from repeal of the regulation and expects a slight decrease in expenditures. The slight decrease in expenditures is the result of removal of the requirement for the agency to issue permits and compliance agreements and to conduct inspections.</p> <p>No revenue is generated by this regulation.</p>
<p><i>For other state agencies:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including a delineation of one-time versus on-going expenditures.</p>	<p>State agencies will no longer be required to comply with provisions of the regulation, including the requirement to obtain a permit, conduct training, and conduct inspections of regulated articles. VDACS anticipates that the cost savings to state agencies will be minimal.</p>
<p><i>For all agencies:</i> Benefits the regulatory change is designed to produce.</p>	<p>The repeal of the regulation will eliminate any expenses that state agencies incur in complying with the provisions of the regulation.</p>

Impact on Localities

If this analysis has been reported on the ORM Economic Impact form, indicate the tables (1a or 2) on which it was reported. Information provided on that form need not be repeated here.

<p>Projected costs, savings, fees or revenues resulting from the regulatory change.</p>	<p>Localities will no longer be required to comply with provisions of the regulation, including the requirement to obtain a permit, conduct training, and conduct inspections of regulated articles. VDACS anticipates that the cost savings to localities will be minimal.</p>
<p>Benefits the regulatory change is designed to produce.</p>	<p>The repeal of the regulation will eliminate any expenses that localities incur in complying with the provisions of the regulation.</p>

Impact on Other Entities

If this analysis has been reported on the ORM Economic Impact form, indicate the tables (1a, 3, or 4) on which it was reported. Information provided on that form need not be repeated here.

<p>Description of the individuals, businesses, or other entities likely to be affected by the regulatory change. If no other entities will be affected, include a specific statement to that effect.</p>	<p>Persons moving regulated articles out of the regulated areas will be affected by this regulatory action.</p>
<p>Agency's best estimate of the number of such entities that will be affected. Include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that: a) is independently owned and operated and; b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p>	<p>Currently, there are 416 businesses that have a Virginia Spotted Lanternfly permit. VDACS is unable to determine the number of additional businesses within the regulated areas that may need a permit in the future or the number of businesses that will need a permit if the regulated areas are expanded. VDACS is unable to determine the number of small businesses that are currently required to follow the provisions of the regulation but estimates that the majority of the impacted businesses are small businesses.</p>
<p>All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. Be specific and include all costs including, but not limited to: a) projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the regulatory change; c) fees; d) purchases of equipment or services; and e) time required to comply with the requirements.</p>	<p>Affected entities will have no costs associated with the repeal of this regulation. Employees of permitted businesses are required to complete training before a permit is issued, maintain training records, and conduct inspections of regulated articles. As such, there will be a minimum cost savings of \$6 per business, which is the cost to receive training, as well as savings related to recordkeeping and savings for personnel time to conduct inspections. The \$6 is remitted to Virginia Tech, which conducts the training, not VDACS. The permit that VDACS issues is provided to businesses at no cost.</p>
<p>Benefits the regulatory change is designed to produce.</p>	<p>Repeal of the regulation will remove the regulatory burden associated with compliance with provisions of the regulation on individuals, businesses, and other entities.</p>

Alternatives to Regulation

Describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in § 2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulatory change.

The alternative considered was the continuation of the regulation. However, the regulation is not effective at preventing the spread of SLF and requires that businesses moving regulated articles out of the regulated area to comply with requirements of the regulation. There are no other alternatives less intrusive or costly than the proposed repeal of this regulation.

If this analysis has been reported on the ORM Economic Impact form, indicate the tables on which it was reported. Information provided on that form need not be repeated here.

Regulatory Flexibility Analysis

Consistent with § 2.2-4007.1 B of the Code of Virginia, describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the regulatory change.

This regulatory action will repeal this regulation; therefore, no less stringent requirement exists.

If this analysis has been reported on the ORM Economic Impact form, indicate the tables on which it was reported. Information provided on that form need not be repeated here.

Public Participation

Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below.

Consistent with § 2.2-4011 of the Code of Virginia, if an objection to the use of the fast-track process is received within the 30-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall: 1) file notice of the objections with the Registrar of Regulations for publication in the Virginia Register and 2) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

If you are objecting to the use of the fast-track process as the means of promulgating this regulation, please clearly indicate your objection in your comment. Please also indicate the nature of, and reason for, your objection to using this process.

The Board of Agriculture and Consumer Services is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal and any alternative approaches, (ii) the potential impacts of the regulation, and (iii) the agency’s regulatory flexibility analysis stated in this background document.

Anyone wishing to submit written comments for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at: <https://townhall.virginia.gov>. Comments may also be submitted by mail or email to:

David Gianino, Program Manager
 VDACS Office of Plant Industry Services
 P.O. Box 1163
 Richmond, VA 23218
david.gianino@vdacs.virginia.gov

In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

Detail of Changes

List all regulatory changes and the consequences of the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Use all tables that apply, but delete inapplicable tables.

If an existing VAC Chapter(s) is being amended or repealed, use Table 1 to describe the changes between existing VAC Chapter(s) and the proposed regulation. If existing VAC Chapter(s) or sections are being repealed and replaced, ensure Table 1 clearly shows both the current number and the new number for each repealed section and the replacement section.

Table 1: Changes to Existing VAC Chapter(s)

Current chapter-section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
10	N/A	Declaration of quarantine	Repeal.
20	N/A	Purpose of quarantine	Repeal. The agency believes the regulation is no longer necessary to prevent the artificial spread of the spotted lanternfly to uninfested areas in the Commonwealth by regulating the movement of articles that can transport the insect.
30	N/A	Definitions	Repeal.
40	N/A	Regulated articles	Repeal. Items that are currently regulated articles will no longer be subject to movement restrictions.

50	N/A	Regulated areas	Repeal. Items will be able to move from localities currently deemed a regulated area without restrictions.
60	N/A	Conditions governing the intrastate movement of regulated articles by a person conducting business	Repeal. Persons conducting business will be able to move items intrastate without restrictions.
70	N/A	Conditions governing the intrastate movement of regulated articles by a person not conducting business	Repeal. Persons not conducting business will be able to move items intrastate without restrictions.
80	N/A	Issuance and cancellation of permits	Repeal. Certificates and limited permits will no longer be required for intrastate movement of items that are currently regulated articles.
90	N/A	Training requirements	Repeal. Businesses will no longer be required to obtain a spotted lanternfly permit and will no longer be required to take agency approved training.
100	N/A	Inspection, treatment, and disposal of regulated articles and pests	Repeal. The repeal of this regulation will eliminate the need for VDACS staff to inspect, treat, and dispose of spotted lanternfly and items that are currently regulated articles.
110	N/A	Prohibited entry into Virginia	Repeal. Items that are currently prohibited from entering Virginia from other states that are known to have spotted lanternfly or from any other area of the United States where federal or state plant regulatory officials have determined spotted lanternfly to be present will be able to move freely into Virginia without prior written approval from the Commissioner.
120	N/A	Nonliability of the department	Repeal.
130	N/A	Repeal of this quarantine	Repeal.