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Exempt Action Final Regulation Agency Background Document

Agency name	Board of Agriculture and Consumer Services
Virginia Administrative Code (VAC) citation(s)	2 VAC 5-331
Regulation title(s)	Rules for Enforcement of the Virginia Tree and Crop Pests Law – Spotted Lanternfly Quarantine
Action title	Establish quarantine to reduce the spread of Spotted Lanternfly
Final agency action date	July 23, 2019
Date this document prepared	July 30, 2019

While a regulatory action may be exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 of the *Code of Virginia*, the agency is still encouraged to provide information to the public on the Regulatory Town Hall using this form. However, the agency may still be required to comply with the Virginia Register Act, Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1 VAC7-10), and the *Virginia Register Form, Style, and Procedure Manual for Publication of Virginia Regulations*.

Brief Summary

Please 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.

Pursuant to its authority under § 3.2-703 of the Code of Virginia, the Board of Agriculture and Consumer Services adopted the Spotted Lanternfly Quarantine on July 23, 2019. The purpose of this new regulation is to help prevent the artificial movement of Spotted Lanternfly to un-infested areas of the Commonwealth. The Spotted Lanternfly Quarantine restricts the movement of those articles that have the ability to spread the Spotted Lanternfly from quarantined areas to nonquarantined areas of the Commonwealth.

The Spotted Lanternfly is an invasive pest that feeds on more than 70 plant species, including grapes, pome and stone fruits, hops, and *Ailanthus altissima* (Tree of Heaven). The Spotted Lanternfly is a threat

to Virginia’s grape, apple, hops, and forestry industries and can spread long distances by people who move articles containing Spotted Lanternfly egg masses, nymphs, or adults. If allowed to spread, this pest could impact Virginia’s agricultural and forestry industries. The Spotted Lanternfly was initially detected in Winchester in January 2018 and has subsequently spread into Frederick County.

Section 40 of the Spotted Lanternfly Quarantine lists the regulated articles, which are articles that pose a risk for spreading the Spotted Lanternfly and are, therefore, subject to the provisions of the regulation. Section 80 requires any person conducting business to obtain a permit from the Commissioner of Agriculture and Consumer Services prior to moving regulated articles out of the quarantined area. In order to obtain the permit, a person must complete agency-approved training related to requirements for complying with the regulation and identification of the Spotted Lanternfly. The permit requires businesses to maintain applicable training records and ensure that regulated articles are inspected and free of Spotted Lanternfly prior to moving such articles from the quarantined area to a nonquarantined area. The quarantined areas, as established in Section 50 of the regulation, are the entire City of Winchester and county of Frederick.

Pursuant to § 3.2-703 of the Code of Virginia, the Commissioner of Agriculture and Consumer Services established a temporary Spotted Lanternfly Quarantine on May 28, 2019, in an effort to prevent the artificial spread of this pest and protect Virginia’s agricultural and natural resources. Section 3.2-703 of the Code of Virginia requires a public hearing when it becomes necessary to extend a temporary regulation beyond 90 days in order to prevent or retard the spread of a pest. The public hearing was held July 23, 2019, in conjunction with a meeting of the Board of Agriculture and Consumer Services. No comments were offered at this hearing. The agency also provided a public comment forum on the Virginia Regulatory Town Hall website, which began June 10, 2019 and ended July 9, 2019. No comments were submitted during this forum.

Mandate and Impetus

Please identify the mandate for this regulatory change, and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, internal staff review, petition for rulemaking, periodic review, board decision, etc.). “Mandate” is defined as “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.”

This quarantine is not the result of a specific directive from the General Assembly, the federal government, or a court.

The Spotted Lanternfly Quarantine was established in response to survey data indicating that the Spotted Lanternfly had spread from the initial infested site in the City of Winchester and had become established in the City of Winchester and Frederick County. If unregulated, the Spotted Lanternfly could spread throughout the Commonwealth.

Statement of Final Agency Action

Please 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 July 23, 2019, the Board of Agriculture and Consumer Services adopted as a final regulation, 2 VAC 5-331, *Rules for Enforcement of the Virginia Tree and Crop Pests Law – Spotted Lanternfly Quarantine.*