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Exempt Action: Final Regulation Agency Background Document

Agency name	Commissioner of Agriculture and Consumer Services
Virginia Administrative Code (VAC) Chapter citation(s)	2 VAC 5-315
VAC Chapter title(s)	Virginia Imported Fire Ant Quarantine for Enforcement of the Virginia Pest Law
Action title	Expand imported fire ant quarantine to include certain counties in southeastern Virginia
Final agency action date	December 5, 2022
Date this document prepared	December 5, 2022

This information is required for executive branch review pursuant to 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. In addition, this information is required by the Virginia Registrar of Regulations pursuant to the Virginia Register Act (§ 2.2-4100 et seq. of the Code of Virginia). Regulations must conform to 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.

Section 3.2-703 of the Code of Virginia (Code) authorizes the Commissioner of the Department of Agriculture and Consumer Services (VDACS) to extend or reduce areas currently regulated for plant pests. Pursuant to this authority, the Commissioner has expanded the *Virginia Imported Fire Ant Quarantine for Enforcement of the Virginia Pest Law, 2 VAC 5-315 et seq.*, to include the counties of Charlotte, Dinwiddie, Halifax, Lunenburg, and Sussex due to an increase in imported fire ant populations in these localities. Expansion of the regulated area became necessary after surveys conducted by VDACS indicated that imported fire ant populations had become established in these localities and eradication was no longer feasible.

Once established, the imported fire ant has the potential to spread to non-infested areas, either through natural means or through the movement of infested articles (artificial spread). The quarantine is intended to prevent the artificial spread of this pest. Under the terms of the quarantine, articles at risk for transporting imported fire ants (regulated articles) are prohibited from moving out of the quarantined area unless certified as free of imported fire ant. Imported fire ant free certification can be obtained through (i) inspections conducted by VDACS or (ii) compliance agreements between businesses and VDACS, which stipulate steps businesses must take to ensure regulated articles transported out of the quarantine are free of imported fire ants.

Section 3.2-703 of the Code requires that, prior to extension or reduction of a quarantine, the Commissioner must provide notice in a newspaper with general circulation in the affected area. Legal notices were published in local newspapers in Charlotte, Dinwiddie, Halifax, Lunenburg, and Sussex counties during the week of November 28 - December 2, 2022.

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, internal staff review, 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."

Expansion of the regulated area became necessary after recent surveys conducted by VDACS indicated that imported fire ant populations had become established in the counties of Charlotte, Dinwiddie, Halifax, Lunenburg, and Sussex and eradication was no longer feasible. Expansion of the quarantined area is intended to prevent the artificial spread of the imported fire ant from infested areas of the Commonwealth to non-infested areas, thereby reducing the impact of the imported fire ant on citizens and businesses and protecting the public's health and welfare in non-infested areas.

The imported fire ant quarantine was established in 2009 after eradication efforts were unsuccessful and restricts the movement of regulated articles capable of moving the imported fire ant to uninfested areas of Virginia. The initial quarantine included much of the Tidewater area. In 2017 and 2018, survey data indicated a widespread population in south central Virginia, and the regulated area was expanded in 2019, adding five new counties and two independent cities to the quarantined area.

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.

Pursuant to Section 3.2-703 of the Code, the Commissioner of Agriculture and Consumer Services expanded the regulated area of the Virginia Imported Fire Ant Quarantine for Enforcement of the Virginia Pest Law on December 5, 2022, in an effort to prevent further artificial spread of the imported fire ant and protect Virginia's agricultural and natural resources.