

Chapter 7. Tree and Crop Pests.

Article 1. Pests.

§ 3.2-700. Definitions.

As used in this article, unless the context requires a different meaning:

"Certificate" means a document issued or authorized by the Commissioner indicating that a regulated article is not contaminated with a pest.

"Host" means any plant or plant product upon which a pest is dependent for completion of any portion of its life cycle.

"Infested" means actually infested or infected with a pest or so exposed to infestation that it would be reasonable to believe that an infestation exists.

"Move" means to ship, offer for shipment, receive for transportation, carry, or otherwise transport, move or allow to be moved.

"Permit" means a document issued or authorized by the Commissioner to provide for the movement of regulated articles to restricted destinations for limited handling, utilization, or processing.

"Person" means the term as defined in § 1-230. The term also means any society.

"Pest" means an insect, disease, parasitic plant, or other organism of any character whatever, in any living stage, vertebrate or invertebrate, causing or capable of causing injury or damage to any plant or part thereof or any processed, manufactured, or other product of plants, or otherwise creating a public nuisance.

"Regulated article" means any article of any character carrying or capable of carrying the pest against which the quarantine is directed.

1975, c. 29, § 3.1-188.20; 1980, c. 291; 2008, c. 860.

§ 3.2-701. Administration; regulations.

The Commissioner shall protect the agricultural, horticultural, and other interests of the Commonwealth from plant pests and supervise and direct the execution of this article and regulations adopted hereunder.

1975, c. 29, § 3.1-188.21; 1980, c. 291; 2000, c. 730; 2008, c. 860.

§ 3.2-702. Abundance surveys; eradication or suppression of pests.

The Commissioner shall direct abundance surveys for plant pests and may carry out operations or measures to locate, suppress, control, eradicate, prevent, or retard the spread of pests. When the Commissioner determines that a new or dangerous or highly injurious plant pest exists within the Commonwealth or that an established pest requires control and the nature of the pest dictates immediate action, he may proceed with eradication or suppression. Provided further, that whenever the Commissioner intends to go upon any property for the purpose of eradicating or suppressing pests, he shall before entering upon any such property, give a written notice to

the owner or occupant thereof at least 24 hours prior to such entry, setting forth in detail the purpose or purposes for which such entry shall be made.

In the event the Commissioner determines a plant pest does not require immediate action, he shall report his findings, including the nature of the pest and method of proposed treatment, to the Board in writing and to the property owners or persons in charge of the property concerned by printing a copy thereof, at least once, in at least one newspaper of general circulation in the locality concerned. In case of objection to the action proposed, an appeal shall lie to the Board. Such appeal shall be taken within seven days from the issue of the notice and shall act as a stay of proceedings insofar as the property of the person noting the appeal is concerned until it is heard and decided.

1975, c. 29, § 3.1-188.22; 1980, c. 291; 2008, c. 860.

§ 3.2-703. Authority to quarantine.

The Board may 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. Before a quarantine is adopted, the Board shall, after due public notice, hold a public hearing in accordance with the Administrative Process Act (§ 2.2-4000 et seq.), at which hearing any interested party may appear and be heard either in person or by attorney.

Notwithstanding the provisions of § 2.2-4002 or any other law to the contrary, the Commissioner may impose a temporary quarantine for a period not to exceed 90 days. A public hearing, as provided herein, shall be held if it appears that a quarantine for more than the 90-day period will be necessary to prevent or retard the spread of the pest. The Commissioner shall give notice of the establishment of the quarantine in a newspaper having general circulation in the area affected by the quarantine. The Commissioner may limit the application of the temporary or permanent quarantine to the infested area and appropriate environs, to be known as the regulated areas, and may without further hearing extend or reduce the regulated area upon publication of a notice to that effect in a newspaper having general circulation in the area affected by the quarantine or by direct written notice to those concerned. Any temporary quarantine imposed by the Commissioner or any extensions or reductions in the regulated areas pursuant to this section shall be reviewed by the Board at its next regularly scheduled meeting, such review by the Board shall be made within 90 days of the Commissioner's action.

Following establishment of a quarantine, no person shall move any regulated article described in the quarantine or move the pest against which the quarantine is established, within, from, into, or through the Commonwealth contrary to regulations.

The regulations may restrict the movement of the pest and any regulated articles from the regulated area in the Commonwealth into or through other parts of the Commonwealth or other states and from the regulated area in other states into or through the Commonwealth and shall impose such inspection, disinfection, certification, or permit and other requirements as the Commissioner deems necessary to effectuate the purposes of this article. The Commissioner may issue administrative instructions relating to the enforcement of regulations including acceptable certification procedures, regulated articles, and exemptions.

1975, c. 29, § 3.1-188.23; 1980, c. 291; 2008, c. 860.

§ 3.2-704. Quarantine against regulated articles in other states.

When the Board has good reason to believe in the existence of infested regulated articles in

localities in other states, territories, or countries, or that conditions exist that, in the judgment of the Board, render the importation of such regulated articles from such localities a menace to the health of the Commonwealth, the Board shall, by proclamation, prohibit the importation of any regulated article from any locality of other states, territories, or countries, into the Commonwealth.

1975, c. 29, § 3.1-188.24; 2008, c. 860.

§ 3.2-705. Authority for abatement and other emergency measures; compensation to property owners.

Whenever the Commissioner finds any article that is infested or reasonably believed to be infested or a host or pest exists on any property or is in transit in the Commonwealth, he may require full information as to origin, number and destination of same and, upon giving notice to the owner or his agent in possession thereof, seize, quarantine, treat, or otherwise dispose of such pest, host, or article in such manner as the Commissioner deems necessary to suppress, control, eradicate, prevent, or retard the spread of a pest; or the Commissioner may order such owner or agent to so treat or otherwise dispose of the pest, host, or article. The owner of any property destroyed or ordered to be treated or otherwise disposed of under this section may, in an action against the Commonwealth in the appropriate court, recover just compensation for any property so destroyed or the reasonable costs of disposal of any property so ordered if he establishes that the property was not a pest, or a host, or an infested article.

1975, c. 29, § 3.1-188.25; 1980, c. 291; 2008, c. 860.

§ 3.2-706. Authority for inspections; warrants.

To effectuate the purpose of this article, the Commissioner may, with a warrant or with the consent of the owner, make reasonable inspections of any property in the Commonwealth and may, without a warrant, stop and inspect, in a reasonable manner, any means of conveyance moving within the Commonwealth, upon probable cause that it contains or carries any pest, host, or other regulated article subject to this article, and may make any other reasonable inspection of any property or means of conveyance for which, under the Constitution of the United States and the Constitution of the Commonwealth, no warrant is required.

In accordance with § 19.2-52, the appropriate persons have authority to issue warrants for such inspections upon a showing by the Commissioner that there is probable cause to believe that there exists in or on the property to be inspected a pest, host, or other regulated article subject to this article.

1975, c. 29, § 3.1-188.26; 1980, c. 291; 2008, c. 860.

§ 3.2-707. Cooperation with other agencies and private organizations.

When the Commissioner deems it necessary to suppress, control, eradicate, prevent, or retard the spread of any pest, he may cooperate with:

1. Any agency of the federal government, and may expend state funds on federal lands;
2. Any agency of an adjacent state if the use of funds appropriated to carry out this article for operations in an adjacent are approved in advance by the Governor or his designee;
3. Any agency of a local government within the Commonwealth; and

4. Any public and private organizations within the Commonwealth.

1975, c. 29, § 3.1-188.27; 1990, c. 370; 2000, c. 730; 2008, c. 860.

§ 3.2-708. Cooperative Suppression Program Fund established.

The Cooperative Suppression Program Fund is hereby established as a special fund on the books of the State Comptroller, and all moneys credited to such fund are hereby appropriated for the purpose set forth in the Department's Gypsy Moth Cooperative Suppression Program Guidelines and shall be used exclusively for the administration of the Cooperative Suppression Program. Moneys for such fund may be derived from appropriations from the general fund of the state treasury; grants of private or government money designated for specified activities pursuant to the Suppression Program; fees for services rendered pursuant to the Suppression Program; payment for products, equipment, or material or any other thing supplied by the Commissioner; payment for educational publications, materials or supplies provided by the Commissioner, and grants, bequests and donations. All funds collected for, appropriated, or received by the Commissioner shall be paid into the state treasury to the credit of the Gypsy Moth Cooperative Suppression Program Fund. No part of such fund shall revert to the general fund of the state treasury.

1990, c. 370, § 3.1-188.27:1; 2008, c. 860.

§ 3.2-709. Authority for compensation to growers in infested areas.

The Commissioner, when he determines that it is necessary to fulfill the objectives of this article, may authorize the payment of reasonable compensation to growers in infested areas for eliminating or not planting host crops, or otherwise controlling the target pest, pursuant to instructions issued by the Commissioner or for losses or expenses resulting from the destruction of any host or regulated articles. No payment shall be authorized for the destruction of regulated articles moved in violation of any regulation or any hosts planted contrary to instructions issued by the Commissioner.

1975, c. 29, § 3.1-188.28; 2008, c. 860.

§ 3.2-710. Penalties.

A. Any person who violates any of the provisions of this article, or who alters, forges, or counterfeits, or uses without authority any certificate or permit or other document provided for in this article or in the regulations of the Board adopted hereunder is guilty of a Class 1 misdemeanor.

B. Any person who has knowingly moved any regulated article into the Commonwealth from any quarantined area of any other state, which regulated article has not been treated or handled under provisions of the quarantine and regulations in effect at the point of origin, is guilty of a Class 1 misdemeanor.

1975, c. 29, § 3.1-188.29; 1980, c. 291; 2008, c. 860.

§ 3.2-711. Costs of administration; reimbursements to Commonwealth.

Costs of administering this law shall be borne by the Commonwealth. The costs for services, products, or articles that the Commissioner determines are beyond the reasonable scope of the law, shall be paid by the persons affected to the State Treasurer. The Commissioner shall cause all reimbursements to be promptly credited to the State fund from which expended, regardless of the date the costs were incurred or collected.

1975, c. 29, § 3.1-188.30; 2008, c. 860.

§ 3.2-712. Permit required to sell and transport plant pests.

No person shall sell, barter, offer for sale, move, transport, deliver, ship, or offer for shipment into or within the Commonwealth any plant pests in any living stage without first obtaining a permit from the Commissioner. Such permit shall be issued only after it has been determined that the plant pests are not injurious, are generally present already, or are for scientific purposes subject to specified safeguards.

Code 1950, § 3-178.14; 1964, c. 476; 1966, c. 702, § 3.1-188.31:1; 1980, c. 291; 2008, c. 860.

§ 3.2-713. Judicial review.

Judicial review of any action of the Board or the Commissioner shall be in accordance with the Administrative Process Act (§ 2.2-4000 et seq.).

1980, c. 291, § 3.1-188.31:2; 2008, c. 860.

Article 2. Pest Control Compact [Repealed].

§ 3.2-714. Repealed.

Repealed by Acts 2015, c. 373, cl. 1.