

# Virginia Administrative Code

## CHAPTER 318

### RULES AND REGULATIONS FOR ENFORCEMENT OF THE VIRGINIA PEST LAW - THOUSAND CANKERS DISEASE QUARANTINE

#### **2VAC5-318-10. Declaration of quarantine.**

A quarantine is hereby established to restrict the movement of certain articles capable of transporting Thousand Cankers Disease unless such articles comply with the conditions of this regulation.

#### Statutory Authority

§ 3.2-703 of the Code of Virginia.

#### Historical Notes

Derived from Virginia Register Volume 28, Issue 9, eff. January 2, 2012.

#### **2VAC5-318-20. Purpose of quarantine.**

The purpose of this quarantine is to help prevent the artificial spread of Thousand Cankers Disease to uninfested areas of the Commonwealth by regulating the movement of articles that are capable of transporting the disease. Thousand Cankers Disease is a disease complex that attacks walnut trees, *Juglans* spp. The fungus *Geosmithia morbida* is vectored by the walnut twig beetle, *Pityophthorus juglandis*, causing small cankers under the bark of the tree. The beetle introduces the fungus while it tunnels beneath the bark. As more beetles attack the tree, the number of cankers increases until they coalesce to girdle twigs and branches, restricting movement of nutrients and eventually killing the tree. Thousand Cankers Disease has become established in the Commonwealth and has the potential to spread to uninfested areas by natural means or through the movement of infested articles.

#### Statutory Authority

§ 3.2-703 of the Code of Virginia.

#### Historical Notes

Derived from Virginia Register Volume 28, Issue 9, eff. January 2, 2012.

**2VAC5-318-30. Definitions.**

The following words and terms shall have the following meanings unless the context clearly indicates otherwise:

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

"Certificate" means a document issued by an inspector or person operating in accordance with a compliance agreement to allow the movement of regulated articles to any destination.

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

"Commonwealth" means the Commonwealth of Virginia.

"Compliance agreement" means a written agreement between a person engaged in growing, handling, receiving, or moving regulated articles and the Virginia Department of Agriculture and Consumer Services, wherein the former agrees to comply with the requirements of the compliance agreement and comply with the provisions of this regulation.

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

"Infestation" means the presence of Thousand Cankers Disease or the existence of circumstances that make it reasonable to suspect that Thousand Cankers Disease is present.

"Inspector" means an employee of the Virginia Department of Agriculture and Consumer Services or other person authorized by the Commissioner of the Virginia Department of Agriculture and Consumer Services to enforce the provisions of this quarantine or regulation.

"Limited permit" or "permit" means a document issued by an inspector to allow the movement of regulated articles to a specific destination.

"Moved," "move," or "movement" means shipped; offered for shipment; received for transportation; transported; carried; or allowed to be moved, shipped, transported, or carried.

"Person" means the term as defined in § 1-230 of the Code of Virginia.

"Regulated area" means the localities, areas, or states listed in 2VAC5-318-50 of this regulation.

"Thousand Cankers Disease" means the disease complex caused by the fungus *Geosmithia morbida* that is vectored into walnut trees by the walnut twig beetle, *Pityophthorus juglandis*.

"Virginia Pest Law" means Chapter 7 (§ 3.2-700 et seq.) of Title 3.2 of the Code of Virginia.

Statutory Authority

§ 3.2-703 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 28, Issue 9, eff. January 2, 2012.

**2VAC5-318-40. Regulated articles.**

The following articles are regulated under the provisions of this regulation:

1. Any life stage of the walnut twig beetle, *Pityophthorus juglandis*.
2. The fungal pathogen, *Geosmithia morbida*.
3. All plants and plant parts of the genus *Juglans* including but not limited to nursery stock, budwood, scionwood, green lumber, firewood, and other material living, dead, cut, or fallen including stumps, roots, branches, mulch, and composted and uncomposted chips.
4. Specific exemptions include, but are not limited to, nuts, nut meats, hulls, processed lumber (100% bark-free, kiln-dried, with squared edges), and finished wood products without bark, including walnut furniture, instruments, and other items derived from the genus *Juglans*.
5. Any other article or means of conveyance when it is determined by an inspector that it presents a risk of spread of Thousand Cankers Disease.

Statutory Authority

§ 3.2-703 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 28, Issue 9, eff. January 2, 2012.

**2VAC5-318-50. Regulated areas.**

The following areas in Virginia are quarantined for Thousand Cankers Disease:

1. The entire counties of:

Chesterfield

Fairfax

Goochland

Hanover

Henrico

King and Queen

King William

New Kent

Powhatan

Prince William

2. The entire cities of:

Colonial Heights

Fairfax

Falls Church

Manassas

Manassas Park

Richmond

Statutory Authority

§ 3.2-703 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 28, Issue 9, eff. January 2, 2012; amended, Virginia Register Volume 28, Issue 25, eff. July 24, 2012; Volume 29, Issue 8, eff. November 30, 2012.

**2VAC5-318-60. Conditions governing the intrastate movement of regulated articles.**

A. Movement within a regulated area. Movement of a regulated article solely within a regulated area is allowed without restriction.

B. Movement from a regulated area to an unregulated area. Movement of a regulated article that originates from within a regulated area to an unregulated area is allowed only if the regulated article is accompanied by a certificate or limited permit issued in accordance with 2VAC5-318-70 and attached in accordance with 2VAC5-318-100.

C. Movement from an unregulated area through a regulated area. A regulated article that originates outside of a regulated area may move through a regulated area under the following conditions:

1. With a certificate or limited permit issued in accordance with 2VAC5-318-70 and attached in accordance with 2VAC5-318-100; or

2. Without a certificate or limited permit if:

- a. Accompanied by a waybill that indicates the point of origin of the regulated article;

- b. The regulated article is moved directly through the regulated area without stopping, except for refueling or due to traffic conditions; or has been stored, packed, or handled at locations approved by an inspector as not posing a risk of infestation; and

- c. The regulated article has not been combined or commingled with other articles so as to lose its individual identity.

D. Movement from a regulated area through an unregulated area. A regulated article that originates from within a regulated area may be moved through an unregulated area to a regulated area under the following conditions:

1. With a certificate or limited permit issued in accordance with 2VAC5-318-70 and attached in accordance with 2VAC5-318-100; or

2. Without a certificate or limited permit if:

a. Accompanied by a waybill that indicates the point of origin of the regulated article;

b. The regulated article is moved directly through the unregulated area without stopping, except for refueling or due to traffic conditions; or has been stored, packed, or handled at locations approved by an inspector as not posing a risk of infestation; and

c. The regulated article has not been combined or commingled with other articles so as to lose its individual identity.

#### Statutory Authority

§ 3.2-703 of the Code of Virginia.

#### Historical Notes

Derived from Virginia Register Volume 28, Issue 9, eff. January 2, 2012.

#### **2VAC5-318-70. Issuance and cancellation of certificates and limited permits.**

A. Certificates and limited permits may be issued by an inspector for the movement of regulated articles originating from within a regulated area to any destination within Virginia when:

1. The regulated articles have been examined by the inspector and found to be apparently free of the Thousand Cankers Disease, or the regulated articles have been grown, produced, manufactured, stored, or handled in such a manner that, in the judgment of the inspector, would prevent an infestation or destroy all life stages of Thousand Cankers Disease;

2. The regulated articles are to be moved in compliance with any additional conditions deemed necessary under the Virginia Pest Law to prevent the spread of Thousand Cankers Disease; and

3. The regulated articles are eligible for unrestricted movement under all other domestic plant quarantines and regulations applicable to the regulated articles.

B. Certificates may be issued by any person operating under a compliance agreement for the movement of regulated articles to any destination within Virginia when:

1. The regulated articles have been examined by any person operating under a compliance agreement and found to be apparently free of Thousand Cankers Disease, or the regulated articles have been grown, produced, manufactured, stored, or handled in such a manner, and following all requirements of the compliance agreement, that would prevent an infestation;

2. The regulated articles are to be moved in compliance with any additional conditions deemed necessary under the Virginia Pest Law to prevent the spread of Thousand Cankers Disease; and

3. The regulated articles are eligible for unrestricted movement under all other domestic plant quarantines and regulations applicable to the regulated articles.

C. Any certificate or limited permit that has been issued or authorized may be withdrawn by the inspector orally or in writing if the inspector determines that the holder of the certificate or limited permit has not complied with all conditions for the use of the certificate or limited permit or with any applicable compliance agreement. If the withdrawal is oral, the withdrawal and the reasons for the withdrawal shall be confirmed in writing and communicated to the certificate or limited permit holder as promptly as circumstances allow.

Statutory Authority

§ 3.2-703 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 28, Issue 9, eff. January 2, 2012.

**2VAC5-318-80. Compliance agreements and cancellation.**

A. Any person engaged in growing, handling, or moving regulated articles may enter into a compliance agreement when an inspector determines that the person understands the

requirements and obligations under this regulation. The agreement shall stipulate safeguards that must be maintained against the establishment and spread of Thousand Canker Disease and the conditions governing the movement of regulated articles.

B. Any compliance agreement may be canceled orally or in writing by an inspector whenever the inspector finds that the person who has entered into the compliance agreement has failed to comply with this regulation. If the cancellation is oral, the cancellation and the reasons for the cancellation shall be confirmed in writing and communicated to the person who entered into such compliance agreement as promptly as circumstances allow.

#### Statutory Authority

§ 3.2-703 of the Code of Virginia.

#### Historical Notes

Derived from Virginia Register Volume 28, Issue 9, eff. January 2, 2012.

### **2VAC5-318-90. Assembly and inspection of regulated articles.**

A. Any person, other than a person authorized to issue certificates under 2VAC5-318-70, requesting a certificate or limited permit shall apply for inspection of the regulated article as far in advance as practical, but no less than five business days before the regulated articles are to be moved.

B. The regulated articles must be assembled at the place and in the manner the inspector designates as necessary to facilitate inspection and shall be safeguarded from infestation.

#### Statutory Authority

§ 3.2-703 of the Code of Virginia.

#### Historical Notes

Derived from Virginia Register Volume 28, Issue 9, eff. January 2, 2012.

### **2VAC5-318-100. Attachment and disposition of certificates and limited permits.**

A. During the intrastate movement, a certificate or limited permit must be attached at all times to the outside of the container that contains the regulated article or to the regulated article itself. The requirements of this section may also be met by attaching the certificate or

limited permit to the consignee's copy of the waybill, provided the regulated article is sufficiently described on the certificate or limited permit and on the waybill to facilitate the identification of the regulated article.

B. The certificate or the limited permit for the intrastate movement of a regulated article must be furnished by the carrier to the consignee at the destination of the regulated article. A copy of the certificate or the limited permit must be retained by the sender of the regulated article at the place of shipment.

Statutory Authority

§ 3.2-703 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 28, Issue 9, eff. January 2, 2012.

**2VAC5-318-110. Inspection and disposal of regulated articles and pests.**

Upon presentation of official credentials, an inspector is authorized to stop and inspect, and to seize, destroy, or otherwise dispose of or require disposal of regulated articles as provided in the Virginia Pest Law.

Statutory Authority

§ 3.2-703 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 28, Issue 9, eff. January 2, 2012.

**2VAC5-318-120. Prohibited entry into Virginia.**

A. The movement into Virginia of a regulated article originating in states that are known to have Thousand Cankers Disease or from any other area of the United States where federal or state plant regulatory officials have determined Thousand Cankers Disease to be present is prohibited unless prior written approval is issued by the commissioner. States with known areas of infestation of Thousand Cankers Disease include, but are not limited to:

Arizona

California

Colorado

Idaho

Nevada

New Mexico

Oregon

Pennsylvania

Tennessee

Utah

Washington

B. The movement of a regulated article for research purposes is permissible with the commissioner's prior written approval.

Statutory Authority

§ 3.2-703 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 28, Issue 9, eff. January 2, 2012.

**2VAC5-318-130. Nonliability of the department.**

The department shall not be liable for any costs incurred by third parties whose costs result from, or are incidental to, inspections required under the provisions of this regulation.

Statutory Authority

§ 3.2-703 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 28, Issue 9, eff. January 2, 2012.

**2VAC5-318-140. Revocation of this regulation.**

This regulation may be revoked by the board when the board is satisfied that the need for this quarantine no longer exists. Such revocation shall take place upon the date specified by the board in the order that revokes this regulation.

Statutory Authority

§ 3.2-703 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 28, Issue 9, eff. January 2, 2012.

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