



townhall.virginia.gov

Final Regulation Agency Background Document

Agency name	Board of Agriculture and Consumer Services
Virginia Administrative Code (VAC) Chapter citation(s)	2 VAC 5 - 317
VAC Chapter title(s)	Regulations for the Enforcement of the Noxious Weeds Law
Action title	Amend noxious weed list
Date this document prepared	December 19, 2023

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.

Section 3.2-802 of Virginia's Noxious Weeds Law provides authority to the Board of Agriculture and Consumer Services to establish by regulation those weeds deemed to be noxious weeds.

Virginia's *Regulations for the Enforcement of the Noxious Weeds Law* (2 VAC 5-317) classifies noxious weed species into three tiers based on the populations of those weed species and the degree to which the weed species can be suppressed or eradicated in Virginia. Noxious weeds are regulated by VDACS, and the sale or movement of such weeds is restricted. This effectively prevents further human-assisted dispersal of the plant species into or throughout the Commonwealth. The weed species are classified as Tier 1, Tier 2, or Tier 3. Tier 1 noxious weeds are those plant species that are not known to occur in Virginia and are therefore more easily eradicated if discovered. Tier 2 noxious weeds are those that are present in the Commonwealth and for which successful eradication or suppression is feasible. Tier 3 noxious weeds are those plant species (i) that are present in the Commonwealth, (ii) whose spread may

be slowed by restrictions on their movement, and (iii) for which successful eradication or suppression is not feasible. The regulation currently lists three plant species as Tier 1 noxious weeds, six plant species as Tier 2 noxious weeds, and five plant species as Tier 3 noxious weeds. This regulatory action seeks to amend *Regulations for the Enforcement of the Noxious Weeds Law* (2 VAC 5-317) by adding 12 plant species to the current noxious weeds list.

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.

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

"Law" means the Noxious Weeds Law (Va. Code § 3.2-800 et seq.).

"Noxious weed" means any living plant, or part thereof, declared by the Board through regulations to be detrimental to crops, surface waters, including lakes, or other desirable plants, livestock, land, or other property, or to be injurious to public health, the environment, or the economy, except when in-state production of such living plant, or part thereof, is commercially viable or such living plant is commercially propagated in Virginia.

"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.

The Board approved the amendment to add 12 weed species to the list of noxious weeds for 2 VAC 5-317 *Regulations for the Enforcement of the Noxious Weeds Law*, on December 7, 2023. After the close of the public comment period, the Board unanimously approved the final stage of the proposed action on March 21, 2024.

Mandate and Impetus

List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding the mandate for this regulatory change, and any other impetus that specifically prompted its initiation. If there are no changes to previously reported information, include a specific statement to that effect.

This regulatory action was not prompted by a mandate. Section 3.2-802 of the Law authorizes the Board to establish, by regulation, those weeds deemed to be noxious weeds. Prior to designating a plant as a noxious weed, the Board must review the recommendations of the Noxious Weeds Advisory Committee, which is established by the Commissioner to assist VDACS in the evaluation of plants that may be declared noxious weeds. The advisory committee may propose weed species for listing and must conduct a scientific risk assessment of such proposed plants. The assessment must include the degree to which a plant species is considered a noxious weed, an analysis of the current and potential in-state viability, and the economic impact on industries affected by the designation of the plant as a noxious weed. The Commissioner must consider the recommendations of the advisory committee in preparing the list of

plants the Commissioner presents to the Board for listing or delisting as noxious weeds and is required to convene the advisory committee at least annually.

The Noxious Weeds Advisory Committee recommended the 12 plant species proposed to be listed in the regulation via this regulatory action. Additionally, the Board has proposed a tier placement for each plant species that reflects the advisory committee's recommended tier placement, with the exception of the tier placement for Siberian elm. The advisory committee recommended that Siberian elm be categorized as a Tier 2 noxious weed, but, given the extent of the spread of Siberian elm throughout the Commonwealth, the Board proposed to categorize this plant species as a Tier 3 noxious weed.

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 (Code) establishes the Board as a policy board with the authority to adopt regulations in accordance with the provisions of Title 3.2 of the Code.

Section 3.2-802 of the Law authorizes the Board to establish by regulation those weeds deemed to be noxious weeds.

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 intent of the regulatory action is to slow the spread of noxious weeds already present in Virginia and prevent the introduction of those listed noxious weed species that are not yet known to occur in the Commonwealth.

The regulatory action is necessary to protect the Commonwealth's agricultural and natural resources from the detrimental impact of noxious weeds. Listed noxious weeds are non-native invasive plants with very few or no natural predators or existing environmental conditions to control their rapid rate of growth. As a result, noxious weeds can grow rapidly and displace native plants. Additionally, the habitat of wildlife may be altered as these plants invariably change the ecosystem by out-competing and displacing native plants. As the spread of a noxious weed can lead to significant economic losses associated with eradication and control costs, this regulation also assists in protecting the economic welfare of citizens.

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.

The regulatory action adds 12 plant species deemed by the Board to meet the definition of "noxious weed" in Section 20 of 2 VAC 5-317. The intent of listing these 12 plants as noxious weeds is to prevent further introductions or slow the spread of existing populations into the Commonwealth.

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 12 plant species recommended for listing as a noxious weed are all invasive plant species; they are highly adaptable to their environment, are copious seed producers, and have an ability to displace native plant species through aggressive and rapid growth. Controlling invasive plants is a costly and lengthy process once they become established. Adding these 12 plants provides an advantage to citizens, as the regulation will serve to prevent the introduction of noxious weeds to un-infested areas or slow the spread from areas that are currently infested. There are no disadvantages to the public or the Commonwealth as a result of this regulatory action.

Requirements More Restrictive than Federal

List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding any requirement of the regulatory change which is more restrictive than applicable federal requirements. If there are no changes to previously reported information, include a specific statement to that effect.

There are no applicable federal requirements.

Agencies, Localities, and Other Entities Particularly Affected

List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding any other state agencies, localities, or other entities that are particularly affected by the regulatory change. If there are no changes to previously reported information, include a specific statement to that effect.

No state agency, locality, or other entity will be particularly affected by the amendments.

Public Comment

Summarize all comments received during the public comment period following the publication of the previous stage, and provide the agency's response. Include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. If no comment was received, enter a specific statement to that effect.

Commenter	Comment	Agency response
15 of the comments	Expressed support for the changes to the regulation.	The agency thanks the commenters for their interest in the proposed regulation.
38 of the comments	Expressed support for the changes to the regulation, however wished	The agency thanks the commenters for their interest in and recommendations for the

	to see additional plant species added to the list.	proposed regulation. The Law requires the Board to review the recommendations of the Noxious Weeds Advisory Committee prior to designation of a plant as a noxious weed, and the Commissioner must consider the recommendations of the Noxious Weed Advisory committee in preparing the list for the Board. The Noxious Weeds Advisory Committee conducts a scientific evaluation of a plant species prior to proposing the species for listing. The agency encourages those who seek additions to the noxious weeds list found in the regulations to work with the Noxious Weeds Advisory Committee to evaluate any additional plant species.
23 of the comments	Expressed desire for additional plant species to be added to the list.	The agency thanks the commenters for their interest in and recommendations for the proposed regulation. The Law requires the Board to review the recommendations of the Noxious Weeds Advisory Committee prior to designation of a plant as a noxious weed, and the Commissioner must consider the recommendations of the Noxious Weeds Advisory Committee in preparing the list for the Board. The Noxious Weeds Advisory Committee conducts a scientific evaluation of a plant species prior to proposing the species for listing. The agency encourages those who seek additions to the noxious weed list found in the regulations to work with the Noxious Weeds Advisory Committee to evaluate any additional plant species.
1 commenter	Expressed desire that VDACS regulate noxious weeds.	The agency thanks the commenter for their interest in the regulation. The agency currently regulates the sale of noxious weeds that are a part of the noxious weed list found in the regulation. The Law requires the Board to review the recommendations of the Noxious Weeds Advisory Committee prior to designation of a plant as a noxious weed, and the Commissioner must consider the recommendations of the Noxious Weeds Advisory Committee in preparing the list for the Board. The Noxious Weeds Advisory Committee conducts a scientific evaluation of the plant species prior to proposing plant species for listing. The agency encourages the commenter to work with the Noxious Weeds Advisory Committee to evaluate additional plant species.
1 commenter	Appeared to express the desire that there be less regulation on noxious weeds and that some of these plants are beneficial.	The agency thanks the commenter for their interest in the proposed regulation. The Law requires the Board to review the recommendations of the Noxious Weeds Advisory Committee prior to removing any

		plants from the noxious weeds list, and the Commissioner must consider the recommendations of the Noxious Weeds Advisory Committee in preparing the removal for the Board's consideration. The agency encourages the commenter to work with the Noxious Weeds Advisory Committee in order to evaluate the removal of plant species from the list.
1 commenter	Expressed the desire that <i>Oplismenus undulatifolius</i> be classified as a Tier 3 noxious weed	The agency thanks the commenter for their interest in the proposed regulation. <i>Oplismenus undulatifolius</i> is already listed as a noxious weed in the regulation and, therefore, is not a part of this action. The Law requires the Board to review the recommendations of the Noxious Weeds Advisory Committee prior to changing the tier classification of any plant on the noxious weeds list, and the Commissioner must consider the recommendations of the Noxious Weeds Advisory Committee in preparing to re-classify listed noxious weeds for the Board's consideration. The agency encourages the commenter to work with the Noxious Weeds Advisory Committee in order to evaluate any reclassification of a plant on the existing noxious weeds list.
Information regarding the Noxious Weeds Advisory Committee and the noxious weed assessment tool can be found here: https://www.vdacs.virginia.gov/plant-industry-services-noxious-weeds.shtml .		

Detail of Changes Made Since the Previous Stage

*List all changes made to the text since the previous stage was published in the Virginia Register of Regulations and the rationale for the changes. 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. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. * Put an asterisk next to any substantive changes.*

No changes were made during the previous stage.

Detail of All Changes Proposed in this Regulatory Action

*List all changes proposed in this action and the rationale for the changes. 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. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. * Put an asterisk next to any substantive changes.*

Current chapter-	New chapter-section	Current requirements in VAC	Change, intent, rationale, and likely impact of updated requirements
------------------	---------------------	-----------------------------	--

section number	number, if applicable		
317-20B	N/A	This subsection states the plant species declared to be Tier 2 noxious weeds.	<p>The amendment to this subsection adds <i>Trapa bispinosa</i> (Two horned trapa) to the list of Tier 2 noxious weeds.</p> <p>The amendment is intended to prevent or reduce the artificial spread of this invasive plant species that is present in the Commonwealth and for which successful eradication or suppression is feasible.</p>
317-20C	N/A	This subsection states the plant species declared to be Tier 3 noxious weeds.	<p>The amendments to this subsection add the following plant species as Tier 3 noxious weeds:</p> <ol style="list-style-type: none"> 1. <i>Alliaria petiolata</i>, Garlic mustard 2. <i>Dioscorea polystachya</i>, Chinese yam 3. <i>Elaeagnus umbellata</i>, Autumn olive 4. <i>Ficaria verna</i>, Lesser celandine 5. <i>Lespedeza bicolor</i>, Bicolor lespedeza 6. <i>Lonicera maackii</i>, Amur honeysuckle 7. <i>Lonicera japonica</i>, Japanese honeysuckle 8. <i>Phragmites australis</i>, Common reed 9. <i>Pueraria montana</i>, Kudzu 10. <i>Reynoutria japonica</i>, Japanese knotweed 11. <i>Ulmus pumila</i>, Siberian elm <p>The amendments are intended to prevent or reduce the artificial spread of these invasive plant species (i) that are present in the Commonwealth, (ii) whose spread may be slowed by restrictions on their movement, and (iii) for which successful eradication or suppression is not feasible.</p>