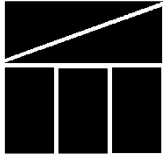


Adverse impact notification sent to Joint Commission on Administrative Rules, House Committee on Appropriations, and Senate Committee on Finance (COV § 2.2-4007.04.C): Yes Not Needed

If/when this economic impact analysis (EIA) is published in the *Virginia Register of Regulations*, notification will be sent to each member of the General Assembly (COV § 2.2-4007.04.B).



Virginia Department of Planning and Budget Economic Impact Analysis

2 VAC 5-317 Regulations for Enforcement of the Noxious Weeds Law

Department of Agriculture and Consumer Services

Town Hall Action/Stage: 4842 / 7961

September 1, 2017

Summary of the Proposed Amendments to Regulation

The Board of Agriculture and Consumer Services (Board) proposes to amend this regulation to conform to Chapter 171 of the 2016 Acts of Assembly (Chapter 171)¹ concerning the designation of plants as noxious weeds.

Result of Analysis

The benefits likely exceed the costs for all proposed changes.

Estimated Economic Impact

Prior to the 2016 Session of the General Assembly, the Noxious Weeds Law² defined “noxious weed” as “any living plant, not widely disseminated, or part thereof, declared by the Board through regulations under this chapter, 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.” Chapter 171 of the 2016 Acts of Assembly (Chapter 171) amended the definition of “noxious weed” by removing the “not widely disseminated” condition and excluding from eligibility for declaration as a noxious weed those living plants or parts thereof for which in-state

¹ See <http://leg1.state.va.us/cgi-bin/legp504.exe?161+ful+CHAP0171>

² See <https://law.lis.virginia.gov/vacode/title3.2/chapter8/>

production is commercially viable or that are commercially propagated in Virginia. In response to the new statutory definition for “noxious weed,” the Board proposes to amend the definitions for “Tier 1 noxious weed” and “Tier 2 noxious weed” in the regulation. The Board also proposes to move two weeds from Tier 1 to Tier 2 as a result of the change in definitions. Under the new definition, Tier 1 noxious weeds are those noxious weeds not known to be present in the Commonwealth; therefore, the Board proposes to move beach vitex and wavyleaf basketgrass, which are in Virginia, from Tier 1 to Tier 2, which is defined as any noxious weed that is present in the Commonwealth and for which successful eradication or suppression is feasible.

Section 80 of the current regulation³ states that “The commissioner may conduct eradication or suppression activities to prevent the dissemination of a **Tier 1**⁴ noxious weed. Eradication or suppression activities may include, but are not limited to, the following: destruction, seizure, stop sale, stop delivery, treatment, or ordering the regulated article to be returned to its point of origin.” The Board proposes to amend “**Tier 1**” to “**Tier 1 or Tier 2.**” Thus, this proposed amendment would keep beach vitex and wavyleaf basketgrass among the plants that could be subject to eradication or suppression activities. Effectively, this would also newly allow eradication or suppression activities of the plants that are currently in Tier 2 and would remain in Tier 2 under the proposed regulation. Those plants are cogon grass, purple loosestrife, and water spinach. The Department of Agriculture and Consumer Services (Department) does not anticipate that this change will affect eradication or suppression activities for those three plants in practice, as these activities are dependent on funding. The Department believes that if funding is made available it is likely that the funds would only be used to eradicate Tier 1 noxious weeds.

To address the concerns that nurseries and landscapers expressed regarding their ability to continue selling commercially viable plants already in the trade, Chapter 171 also added the following requirement to Code of Virginia section § 3.2-802 of the Noxious Weeds Law, which establishes the Board’s authority to declare a weed noxious: “Prior to designating a living plant or part thereof as a noxious weed, the Board shall review the recommendations of an advisory committee established by the Commissioner to conduct a scientific risk assessment of the

³ See <https://law.lis.virginia.gov/admincode/title2/agency5/chapter317/section80/>

⁴ The bold is for emphasis and is not part of the regulatory text.

proposed plant. The assessment shall include the degree to which the plant is detrimental to crops; surface water, including lakes; other desirable plants; livestock; land or other property; public health; the environment; and the economy. The advisory committee shall also include in its recommendations to the Board an analysis of the current and potential in-state commercial viability of the specific plant species and the economic impact on industries affected by the designation of the plant as a noxious weed.” There already exists a Noxious Weeds Advisory Committee for the purpose of assisting the Department in the evaluation and risk-assessment of plants that may be declared noxious weeds. The Board proposes to add the items described above in the legislation to what should be considered by the committee.

Thus the proposals to: 1) amend the definitions of “Tier 1 noxious weed” and “Tier 2 noxious weed”, 2) move beach vitex and wavyleaf basketgrass from Tier 1 to Tier 2, 3) add Tier 2 to those noxious weeds upon which the commissioner may conduct eradication or suppression activities, and 4) add items to be considered when deciding whether a plant is to be designated a noxious weed, will clarify what is effectively required by statute and effectively newly allow eradication or suppression of cogon grass, purple loosestrife, and water spinach. The clarification and avoiding inconsistency with the Code of Virginia is beneficial in that it reduces potential confusion and unintentional actions that may violate the law. As discussed above, the effectively newly allowing eradication or suppression of cogon grass, purple loosestrife, and water spinach will likely have no impact, but does add flexibility.

Businesses and Entities Affected

The proposed amendments will not likely have a large impact on any businesses or other entities. The subject matter concerns nurseries, landscapers, farmers, agribusinesses, various landowners including local governments, conservation organizations, soil and water conservation districts, and weed management businesses and cooperatives.

Localities Particularly Affected

The proposed amendments do not disproportionately affect particular localities.

Projected Impact on Employment

The proposed amendments do not significantly affect employment.

Effects on the Use and Value of Private Property

The proposed amendments do not significantly affect the use and value of private property.

Real Estate Development Costs

The proposed amendments do not significantly affect real estate development costs.

Small Businesses:

Definition

Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as “a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.”

Costs and Other Effects

The proposed amendments do not significantly affect costs for small businesses.

Alternative Method that Minimizes Adverse Impact

The proposed amendments do not adversely affect small businesses.

Adverse Impacts:

Businesses:

The proposed amendments do not adversely affect businesses.

Localities:

The proposed amendments do not adversely affect localities.

Other Entities:

The proposed amendments do not adversely affect other entities.

Legal Mandates

General: The Department of Planning and Budget has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia (Code) and Executive Order Number 17 (2014). Code § 2.2-4007.04 requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the report should include but not be limited to: (1) the projected number of businesses or other entities to whom the proposed regulatory action would apply, (2) the identity of any localities and types of businesses or other entities particularly affected, (3) the projected number of persons and employment positions to be affected, (4) the projected costs to affected businesses or entities to implement or comply with the regulation, and (5) the impact on the use and value of private property.

Adverse impacts: Pursuant to Code § 2.2-4007.04(C): In the event this economic impact analysis reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, the Department of Planning and Budget shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance within the 45-day period.

If the proposed regulatory action may have an adverse effect on small businesses, Code § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to Code § 2.2-4007.1, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.

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