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Periodic Review and Small Business Impact Review Report of Findings

Agency name	Board of Agriculture and Consumer Services
Virginia Administrative Code (VAC) Chapter citation(s)	2 VAC 5-320
VAC Chapter title(s)	Regulations for the Enforcement of the Endangered Plant and Insect Species Act
Date this document prepared	October 3, 2022

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*.

Acronyms and Definitions

Define all acronyms used in this Report, 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.

"Critically imperiled" means any population typically having five or fewer occurrences or 1,000 or fewer individuals.

"Imperiled" means any population typically having 6 to 20 occurrences or 1,001 to 3,000 individuals.

"Rare" means uncommon, infrequently occurring, or thin in density. "Rare" does not mean the specific population rarity rankings of plant and insect species.

"Endangered species" means any species or variety of plant life or insect life determined by the Board of Agriculture and Consumer Services to be in danger of extinction throughout all or a significant part of its range other than a species determined by the Commissioner of Agriculture and Consumer Services not to be in the best interest of the welfare of man.

"Threatened species" means any species determined by the Board of Agriculture and Consumer Services to be likely to become an endangered species within the foreseeable future throughout all or a significant portion of its native range.

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 or 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 of Agriculture and Consumer Services (Board) as a policy board within the meaning of Va. Code § 2.2-2100.

Section 3.2-1002(A) of the Endangered Plant and Insect Species Act (Act) authorizes the Board to adopt regulations including the listing of threatened or endangered species, their taking, quotas, seasons, buying, selling, possessing, monitoring of movement, investigating, protecting, or any other need in furtherance of the purposes of the Act. Section 3.2- 1002(B) states that based upon investigations by the Commissioner of Agriculture and Consumer Services, recommendations from the Director of the Virginia Department of Conservation and Recreation (DCR) regarding candidate species, and from other reliable data, the Board shall approve proposed species (i) to be added to or deleted from the list of threatened species or the list of endangered species or (ii) to be transferred from one list to the other.

Alternatives to Regulation

Describe any viable alternatives for achieving the purpose of the regulation that were considered as part of the periodic review. Include an explanation of why such alternatives were rejected and why this regulation is the least burdensome alternative available for achieving its purpose.

There is no viable alternative regulatory method. The Act and this regulation offer protection for listed threatened or endangered plant species or insect species on all Virginia lands. The regulation is necessary for the protection of globally critically imperiled and imperiled plant and insect species that occur in the Commonwealth of Virginia. The Act provides that when good cause is shown and when necessary to alleviate damage to property, to alleviate the impact on progressive development, or to protect human health, the Commissioner may issue a permit authorizing the removal, taking, or destruction of a state-listed species.

Public Comment

Summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and provide the agency’s response. Be sure to include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. Indicate if an informal advisory group was formed for purposes of assisting in the periodic review.

An informal advisory group was not formed for the purpose of assisting in this periodic review.

Commenter	Comment	Agency response
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Virginia Farm Bureau Federation (VFBB)	We believe the current regulations are sufficient. VFBB has no recommended changes for 2 VAC 5-320 but reserves the right to provide additional comment should regulatory changes be proposed.	The agency appreciates the commenter's participation in this periodic review.
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Effectiveness

Pursuant to § 2.2-4017 of the Code of Virginia, indicate whether the regulation meets the criteria set out in the ORM procedures, including why the regulation is (a) necessary for the protection of public health, safety, and welfare, and (b) is clearly written and easily understandable.

This regulation seeks to protect those plants and insects found in Virginia that are of aesthetic, ecological, educational, scientific, economic, or other value and whose global populations are imperiled. The regulation is essential for the protection of rare natural resources and therefore promotes the public's health, safety, and welfare. The agency has determined that this regulation is clearly written, easily understandable, and not unnecessarily complex.

Decision

Explain the basis for the promulgating agency's decision (retain the regulation as is without making changes, amend the regulation, or repeal the regulation).

If the result of the periodic review is to retain the regulation as is, complete the ORM Economic Impact form.

The agency has determined that this regulation's listing of a species as threatened or endangered continues to offer protection to plants and insects that are of aesthetic, ecological, educational, scientific, economic, or other value to the Commonwealth and, therefore, the regulation should be retained as is.

Small Business Impact

As required by § 2.2-4007.1 E and F of the Code of Virginia, discuss the agency's consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation. Also, discuss why the agency's decision, consistent with applicable law, will minimize the economic impact of regulations on small businesses.

Landowners and their agents, including construction companies undertaking work at the direction of the landowner on the landowner's property, are exempt from the regulations with respect to any threatened or endangered plant or insect species occurring on or within their property. Any major construction project conducted by a public or private construction company on land that is not owned by the builder or developer is subject to this regulation. According to agency documentation, on average, developers and environmental consultants submit approximately 1,000 requests a year seeking information about the anticipated impact of various construction projects on threatened or endangered plant or insect species and less than one percent of the requests involve projects that are impacted by the Virginia Endangered

Plant and Insect Species Act and this regulation. Small businesses are minimally impacted due to the fact that the environs where many of the listed species are located are isolated and largely on private property.

Since the agency last amended this regulation in 2020, it has not received any complaints regarding the regulation. This regulation does not conflict with federal law or state law or regulation. The agency has determined that no change in the affected industry has occurred subsequent to the agency's previous amendments.

