

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): Yes¹ 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 5-320 Regulations for the Enforcement of the Endangered Plant and Insect Species Act

Department of Agriculture and Consumer Services

Town Hall Action/Stage: 5022 / 8583

May 15, 2019

Summary of the Proposed Amendments to Regulation

The Board of Agriculture and Consumer Services (Board) proposes to amend the lists of endangered and threatened plant and insect species by: 1) removing from the regulation a plant species that is no longer believed to occur in the Commonwealth and 2) adding to the endangered and threatened lists certain plant and insect species that are considered in danger of extinction or that are likely to become endangered in the foreseeable future throughout all or a significant portion of their native range.

Result of Analysis

The benefits likely exceed the costs for all proposed changes.

Estimated Economic Impact

Background

Virginia Code § 3.2-1003² specifies that it is

unlawful for any person to dig, take, cut, process, or otherwise collect, remove, transport, possess, sell, offer for sale, or give away any species native to or

¹ Adverse impact is indicated if there is any increase in net cost or reduction in net revenue for any entity, even if the benefits exceed the costs for all entities combined.

² See <https://law.lis.virginia.gov/vacode/title3.2/chapter10/section3.2-1003/>

occurring in the wild in the Commonwealth that are listed in this chapter or the regulations adopted hereunder as threatened or endangered, other than from such person's own land, except in accordance with the provisions of this chapter or the regulations adopted hereunder.

The *Regulations for the Enforcement of the Endangered Plant and Insect Species Act*, which lists endangered and threatened plant and insect species, qualifies as such a regulation. Virginia Code § 3.2-1011³ states that any person who violates the regulations is guilty of a Class 1 misdemeanor.

According to the Virginia Department of Agriculture and Consumer Services (VDACS), in practice the agency works with developers to find ways for construction projects, land development, etc. to proceed while mitigating the impact on endangered and threatened plant and insect species. Often the cost is not large; for example, it could entail moving and replanting plants.

As alluded to above in the Virginia Code § 3.2-1003 quotation, landowners are exempt from the regulations regarding threatened and endangered plant and insect species occurring on or within their property. Landowners who wish to mitigate harm to threatened and endangered species can benefit from voluntarily working with VDACS. Once plants or insects are listed as threatened or endangered, the regulation enables VDACS to collaborate with landowners, at the landowner's discretion, to develop management plans that would support construction projects and other economic development activity on the landowner's property while minimizing negative impact on the species added to the lists.

Proposal

The Board proposes to add the following five species to the list of endangered species: (i) *Clematis addisonii*, (ii) *Ludwigia ravenii*, (iii) *Phemeranthus piedmontanus*, (iv) *Bombus affinis*, and (v) *Pseudanophthalmus parvicollis*. Further, the Board proposes to add the following five species to the list of threatened species: (i) *Houstonia purpurea* var. *montana*, (ii) *Paxistima canbyi*, (iii) *Phlox buckleyi*, (iv) *Pycnanthemum torreyi*, and (v) *Rudbeckia heliopsidis*. According to VDACS, all of these species are only found in remote isolated habitats where

³ See <https://law.lis.virginia.gov/vacode/title3.2/chapter10/section3.2-1011/>

construction or other projects are unlikely to occur. Thus, adding these species to the regulation is not likely to have a significant impact.

The Board proposes to remove *Lycopodiella margueritiae* from the list of threatened species because this plant species is no longer believed to occur in Virginia. This proposed amendment would also not likely have a significant impact.

Businesses and Entities Affected

The proposed amendments are unlikely to significantly affect any businesses or other entities.

Localities Particularly Affected

The proposed amendments do not disproportionately affect particular localities.

Projected Impact on Employment

The proposed amendments are unlikely to affect employment.

Effects on the Use and Value of Private Property

The proposed amendments are unlikely to significantly affect the use and value of private property.

Real Estate Development Costs

Since the species proposed to be added to the regulation are in remote areas where VDACS does not believe land development or construction would be likely to occur, the proposed amendments are unlikely to 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

Since the species proposed to be added to the regulation are in remote areas where VDACS does not believe land development or construction would be likely to occur, the proposed amendments are unlikely to significantly affect costs for small businesses.

Alternative Method that Minimizes Adverse Impact

The proposed amendments are unlikely to adversely affect small businesses.

Adverse Impacts:

Businesses:

The proposed amendments are unlikely to adversely affect businesses.

Localities:

The proposed amendments are unlikely to adversely affect localities.

Other Entities:

The proposed amendments are unlikely to 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 14 (as amended, July 16, 2018). 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.