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Notice of Intended Regulatory Action (NOIRA) 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	June 16, 2021

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1VAC7-10), 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 the subject matter, intent, and goals of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation).

Section 3.2-802 of the Noxious Weeds Law (Law) authorizes the Board of Agriculture and Consumer Services (Board) to designate plant species as noxious weeds. Under this authority, the Board promulgated 2 VAC 5-317, *Regulations for the Enforcement of the Noxious Weeds Law*, which became effective in 2015. Currently, there are 14 plant species listed as noxious weeds.

Regulations for the Enforcement of the Noxious Weeds Law, 2 VAC 5-317-100, directs the Commissioner to establish a Noxious Weed Advisory Committee (Committee) to assist in the evaluation and risk-assessment of plant species that may be declared noxious weeds and make recommendations to the Commissioner regarding plant species that should be listed or delisted as noxious weeds. The Committee recommends that certain weed species be added to the noxious weeds list; therefore, the Board has determined it is now appropriate to consider amending the current list of noxious weeds.

Acronyms and Definitions

Define all acronyms or technical definitions used in this form.

“Board” means the Board of Agriculture and Consumer Services.

“Commissioner” means the Commissioner of Agriculture and Consumer Services.

“Committee” means the Noxious Weeds Advisory Committee.

“Law” means the Noxious Weeds Law.

“Noxious weed” means the term as defined in Va. Code § 3.2-800.

“Regulation” means 2 VAC 5-317, *Regulations for the Enforcement of the Noxious Weeds Law*.

Mandate and Impetus

Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, “mandate” has the same meaning as defined in Executive Order 14 (as amended, July 16, 2018), “a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part.”

This regulatory action was not prompted by a mandate.

The Committee conducted an assessment of certain weed species not currently listed as noxious weeds and recommends that the Board consider adding weed species to the list of noxious weeds.

Section 3.2-802 of the Law authorizes the Board to establish, by regulation, those weeds deemed to be noxious weeds. This section requires that, prior to designating a plant as a noxious weed, the Board review the recommendations of an advisory committee established by the Commissioner to assist in the evaluation of plants that may be declared noxious weeds. The Committee may propose weed species for listing or delisting and shall conduct a scientific risk assessment of such proposed plants. The assessment shall include the degree to which a plant species is considered detrimental, an analysis of the current and potential in-state commercial viability, and the economic impact on industries affected by the designation of the plant as a 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.

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

Purpose

Describe the specific reasons why the agency has determined that this regulation is essential to protect the health, safety, or welfare of citizens. In addition, explain any potential issues that may need to be addressed as the regulation is developed.

The proposed 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. In addition, the habitat of wildlife may be altered as these plants invariably change the ecosystem by out competing and displacing native plants. As the establishment of a noxious weed can lead to significant economic losses due to associated eradication and control costs, this regulation also assists in the protecting the economic welfare of citizens.

Substance

Briefly identify and explain the new substantive provisions that are being considered, the substantive changes to existing sections that are being considered, or both.

The Board has determined it is now appropriate to consider amending the current list of the noxious weeds, which is established in Section 20 of this regulation.

Alternatives to Regulation

Describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in § 2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulatory change.

No alternative regulatory method will better accomplish the objectives of the Law, and exceptions for small businesses are not appropriate. The restriction of the movement of a listed noxious weed is necessary to prevent its dissemination into or within the Commonwealth, and the regulation is necessary to protect the Commonwealth's agricultural and natural resources from the detrimental impact of noxious weeds. As the establishment of a noxious weed can lead to significant economic losses due to associated eradication and control costs, this regulation also assists in protecting the economic welfare of citizens.

Periodic Review and Small Business Impact Review Announcement

If you wish to use this regulatory action to conduct, and this NOIRA to announce, a periodic review (pursuant to § 2.2-4017 of the Code of Virginia and Executive Order 14 (as amended, July 16, 2018)), and a small business impact review (§ 2.2-4007.1 of the Code of Virginia) of this regulation, keep the following text. Modify as necessary for your agency. Otherwise, delete the paragraph below and insert "This NOIRA is not being used to announce a periodic review or a small business impact review."

This NOIRA is not being used to announce a periodic review or a small business impact review.

Public Participation

Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below. In addition, as required by § 2.2-4007.02 of the Code of Virginia describe any other means that will be used to identify and notify interested parties and seek their input, such as regulatory advisory panels or general notices.

The agency is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal, (ii) any alternative approaches, and (iii) the potential impacts of the regulation.

Anyone wishing to submit written comments for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at: <https://townhall.virginia.gov>. Comments may also be submitted by mail, email or fax to:

David Gianino
Program Manager, Office of Plant Industry Services
P.O. Box 1163
Richmond, VA 23218
Fax: 804-371-7793
David.Gianino@vdacs.virginia.gov.

In order to be considered, comments must be received by 11:59 p.m. on the last day of the public comment period.

A public hearing will be held following the publication of this stage, and notice of the hearing will be posted on the Virginia Regulatory Town Hall website (<https://townhall.virginia.gov>) and on the Commonwealth Calendar website (<https://commonwealthcalendar.virginia.gov/>). Both oral and written comments may be submitted at that time.