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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 5-455
VAC Chapter title(s)	<i>Regulations for Tradespersons Installing Invasive Plant Species</i>
Action title	Promulgate regulations governing the installation of invasive plant species by tradespersons in Virginia
Date this document prepared	August 14, 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 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).

Chapter 153 of the 2023 Acts of Assembly amended the Noxious Weeds Law (Va. Code § 3.2-800 *et seq.*) to require the Board of Agriculture and Consumer Services (Board) to develop and adopt regulations requiring tradespersons involved with proposing or installing plants to provide written notification to property owners for all plants proposed for installation that are included on the Virginia Department of Conservation and Recreation's (DCR) Invasive Plant Species List, established pursuant to Va. Code § [10.1-104.6:2](#). There are several commonly used landscape plants that are included on DCR's list, and, when not properly managed, these plants can be challenging to control and may impact the property owner or adjacent properties if the plants escape their containment.

Via this regulatory action, the Board will promulgate the regulation required by Chapter 153 of the 2023 Acts of Assembly.

Acronyms and Definitions

Define all acronyms or technical definitions used in this form.

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

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

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 the ORM procedures, “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.”

Chapter 153 of the 2023 Acts of Assembly directs the Board to develop and adopt regulations requiring tradespersons involved with proposing or installing plants to provide written notification to property owners for all plants proposed for installation that are included on DCR’s list of invasive plants established in Va. Code § [10.1-104.6:2](#).

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 directs the Board to develop and adopt regulations requiring tradespersons involved with proposing or installing plants to provide written notification to property owners for all plants proposed for installation that are included on the list of invasive plants created by DCR pursuant to § 10.1-104.6:2 of the Code.

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 legislation that requires the promulgation of this regulation was likely intended to address concerns that homeowners may be unaware that plants that are being planted by landscapers on their property may have invasive characteristics. There are several commonly used landscape plants that are included on DCR’s list and, when not properly managed, can be challenging to control. Such plants may impact the property owner or adjacent properties if the plants escape their containment or respective planting.

The legislation therefore requires that the Board adopt regulations that require “tradespersons” to notify the property owner when any of the plants being planted are listed on DCR’s Invasive Plant Species List. Notification of a plant species’ invasive status may influence a consumer’s decision to have those plants installed on his property. Additionally, such notification protects consumers’ economic welfare by enabling them to make an informed decision about whether to have an invasive plant installed on their premises.

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.

Chapter 153 of the 2023 Acts of Assembly requires the Board to develop and establish regulations requiring tradespersons who install certain plants in Virginia to notify landowners when a plant being proposed for installation is listed on DCR’s Invasive Plant Species List, established pursuant to § 10.1-104.6:2 of the Code. Such notification shall be in writing. The agency expects to define “tradesperson” in 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.

As Chapter 153 of the 2023 Acts of Assembly requires that the Board promulgate this regulation, the agency has determined that no alternative regulatory method will better accomplish the objectives of the Law. Additionally, the agency has determined that exemptions from this regulation for small businesses are not appropriate.

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 the ORM procedures), and a small business impact review (§ 2.2-4007.1 of the Code of Virginia) of this regulation, keep the following text. Modify it 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 pm on the last day of the public comment period.

A public hearing will not be held following the publication of the proposed stage of this regulatory action.