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## Proposed Regulation Agency Background Document

<b>Agency name</b>	Board of Agriculture and Consumer Services
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	2 VAC 5-455
<b>VAC Chapter title(s)</b>	Regulations for Tradespersons Installing Invasive Plant Species
<b>Action title</b>	Promulgate regulations governing the installation of invasive plant species by tradespersons in Virginia
<b>Date this document prepared</b>	June 27, 2024

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 this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.*

Chapter 153 of the 2023 Acts of Assembly amended the Noxious Weeds Law (Va. Code § 3.2-800 *et seq.*) (Law) 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.

The proposed regulation establishes definitions for "tradesperson," "notification," and "proposal" along with other important terms that define who is responsible for notifying property owners and under what circumstances. The proposed regulation requires (i) a tradesperson to notify a property owner in writing at

the time the tradesperson proposes to install an invasive plant species or prior to the installation of an invasive plant species on their property; (ii) specific information to be included on the notification; and (iii) a tradesperson to maintain documentation of notifications for at least two years from the date a proposal is accepted or from the date of installation.

## Acronyms and Definitions

*Define all acronyms used in this form, and any technical terms that are not also defined in the "Definitions" section of the regulation.*

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"Board" means the Board of Agriculture and Consumer Services.

"DCR" means the Virginia Department of Conservation and Recreation.

"VDACS" means the Virginia Department of Agriculture and Consumer Services.

## 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."*

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This regulatory action is mandated by Chapter 153 of the 2023 Acts of Assembly, which, in part, amended the Law to require 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 Invasive Plant Species List, established pursuant to 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.*

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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(C) 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 established pursuant to § 10.1-104.6:2 of the Code.

**Purpose**

*Explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it is intended to solve.*

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Section 3.2-802(C) of the Law requires the Board to 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 established pursuant to § 10.1-104.6:2 of the Code. The goal of this regulation is to ensure that property owners are notified that certain plants being proposed or installed on their property have invasive characteristics that may allow the plants to spread and make them difficult to manage.

Promulgation of this regulation would address the concern that homeowners may be unaware that plants being installed on their property could 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 and costly to control. Such plants may impact the property owner or adjacent properties if the plants escape their containment or respective planting. Invasive plants also have the potential to negatively impact native ecosystems, and property owners may be less inclined to install such plants on their property if they are aware of the plants’ invasive characteristics. Notification enables consumers to make an informed decision regarding invasive plants being proposed for installation on their property and assists in protecting consumers’ economic welfare.

**Substance**

*Briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the “Detail of Changes” section below.*

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Section 3.2-802(C) of the Noxious Weeds Law requires the Board to 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.

The proposed new regulation requires that (i) a tradesperson notify a property owner in writing at the time of a proposal to install an invasive plant species or prior to the installation of an invasive plant species on their property; (ii) specific information be included on the notification; and (iii) a tradesperson maintain documentation of notifications for at least two years from the date a proposal is accepted or from the date of installation. The regulation also establishes definitions for the terms “tradesperson,” “notification,” and “proposal” to clarify the scope of persons and activities to which the regulation applies.

**Issues**

*Identify the issues associated with the regulatory change, including: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, include a specific statement to that effect.*

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VDACS held a stakeholder forum in February 2024 to collect input from industry representatives and other stakeholders on the development of this regulation. During this forum, participants presented various perspectives on the requirement that tradespersons involved with proposing or installing invasive plants provide written notification to property owners. Some stakeholders expressed that tradespersons are in a better position than consumers to know about the invasive characteristics of certain plants, while other stakeholders noted that entities such as landscaping businesses, who would meet the proposed definition of “tradesperson,” may be unaware of the Law and the proposed regulation, may not know about invasive plants, and may not maintain written records of their interactions with their customers. Stakeholders also noted that landscape architects, who meet the proposed definition of “tradesperson,” may not have direct contact with a property owner but may work as a subcontractor, making notification to the property owner difficult.

The proposed regulation will require a person, who, for compensation, proposes plants for installation or installs plants, to provide notification to landowners when the person proposes or installs invasive plants and to keep records of such notification. The “tradesperson” who is required to provide notification and keep notification records in accordance with this regulation include landscaping designers, landscape architects, landscape companies, contract grounds maintenance crews, and other persons who propose or install plants on property for compensation in Virginia.

The primary advantage of the proposed regulation is that compliance with this regulation will result in consumers receiving information regarding invasive plants being planted on their property. This will increase awareness about invasive plants among the public and potentially reduce the negative impact that could result from the spread of invasive plants.

The primary means by which this regulation will be enforced is through a complaint-based mechanism. VDACS will conduct an inspection of the tradesperson’s records to verify whether notification was given and received. The advantage of this approach to the agency and to the public is that it will not require tradespersons to be registered or routinely inspected by the agency, which saves time and money for both the agency and the public. Only companies that grow or sell nursery stock, which are not “tradespersons” under this proposed regulation, are required to be registered with VDACS currently, so the agency is not able to calculate or estimate how many individuals will need to comply with this proposed regulation. The disadvantage with this approach is that VDACS may not know whether a tradesperson is out of compliance with the regulation and may not have knowledge of all instances of violations of this regulation, making uniform enforcement difficult.

**Requirements More Restrictive than Federal**

*Identify and describe any requirement of the regulatory change which is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements, or no requirements that exceed applicable federal requirements, include a specific statement to that effect.*

There are no applicable federal requirements.

**Agencies, Localities, and Other Entities Particularly Affected**

*Consistent with § 2.2-4007.04 of the Code of Virginia, identify any other state agencies, localities, or other entities particularly affected by the regulatory change. Other entities could include local partners such as tribal governments, school boards, community services boards, and similar regional organizations. “Particularly affected” are those that are likely to bear any identified disproportionate material impact which would not be experienced by other agencies, localities, or entities. “Locality” can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or*

*regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.*

Other State Agencies Particularly Affected

No state agency will be particularly affected by this regulation.

Localities Particularly Affected

No locality will be particularly affected by this regulation.

Other Entities Particularly Affected

Entities that meet the proposed definition of “tradesperson,” which will include landscaping professionals, landscape architects, landscape designers, and other persons involved with installing invasive plants, will be affected by this regulation.

**Economic Impact**

*Consistent with § 2.2-4007.04 of the Code of Virginia, identify all specific economic impacts (costs and/or benefits) anticipated to result from the regulatory change. When describing a particular economic impact, specify which new requirement or change in requirement creates the anticipated economic impact. Keep in mind that this is the proposed change versus the status quo.*

**Impact on State Agencies**

<p><i>For your agency:</i> projected costs, savings, fees, or revenues resulting from the regulatory change, including:                  a) fund source / fund detail;                  b) delineation of one-time versus on-going expenditures; and                  c) whether any costs or revenue loss can be absorbed within existing resources.</p>	<p>VDACS’s existing Office of Plant Industry Services will implement and administer the proposed regulation. Existing VDACS staff will administer and enforce the proposed regulation on a complaint basis, as VDACS does not currently register or license tradespersons. VDACS has no data on which to base an estimate of the cost to the agency to conduct investigations into these complaints.</p>
<p><i>For other state agencies:</i> projected costs, savings, fees, or revenues resulting from the regulatory change, including a delineation of one-time versus on-going expenditures.</p>	<p>There are no anticipated costs, savings, or revenue for other state agencies associated with the proposed regulation.</p>
<p><i>For all agencies:</i> Benefits the regulatory change is designed to produce.</p>	<p>There are no direct benefits to any state agency.</p>

**Impact on Localities**

*If this analysis has been reported on the ORM Economic Impact form, indicate the tables (1a or 2) on which it was reported. Information provided on that form need not be repeated here.*

<p>Projected costs, savings, fees, or revenues resulting from the regulatory change.</p>	<p>The proposed regulation will not result in any costs, savings, or revenue for localities, as it only affects tradespersons involved with proposing or installing invasive plant species.</p>
<p>Benefits the regulatory change is designed to produce.</p>	<p>The proposed regulation is not designed or expected to benefit localities; however, if</p>

	tradespersons are installing invasive plant species onto county or city property, then the locality will receive notification of the potential management issues that will arise from those plants being installed on public property.
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**Impact on Other Entities**

*If this analysis has been reported on the ORM Economic Impact form, indicate the tables (1a, 3, or 4) on which it was reported. Information provided on that form need not be repeated here.*

<p>Description of the individuals, businesses, or other entities likely to be affected by the regulatory change. If no other entities will be affected, include a specific statement to that effect.</p>	<p>“Tradesperson” is not defined in the Code of Virginia but is defined in the proposed regulation as any person who, for compensation, proposes plants for installation or installs plants.</p> <p>The agency expects that the entities affected by the proposed regulation will include landscape designers, landscape architects, landscaping companies, and other individuals who, for compensation, propose plants for installation or install plants onto property in Virginia.</p>
<p>Agency’s best estimate of the number of such entities that will be affected. Include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that:</p> <p>a) is independently owned and operated, and;</p> <p>b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p>	<p>As persons who install plants or propose plants for installation are not required to obtain a license or register with VDACS, the agency is unable to accurately calculate or reliably estimate the number of persons that will be impacted by the proposed regulation. The agency understands that landscape architects are among the entities that propose plants for installation. Landscape architects must be licensed by the Virginia Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects. As of January 1, 2024, there were 974 landscape architects licensed by this board.</p> <p>The agency is unaware of any other agency that registers or licenses entities that install plants or propose plants for installation. Additionally, these entities may be located out-of-state yet provide written plans and proposals or other services to property owners in Virginia, making it more difficult to estimate the number of individuals who will need to comply with the proposed regulation.</p>
<p>All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. Be specific and include all costs including, but not limited to:</p> <p>a) projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses;</p> <p>b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the regulatory change;</p>	<p>There are no required fees, licenses, applications, or permits associated with the proposed regulation. There may be additional expenses that a tradesperson may incur to provide written notification and retain a copy of such of notifications.</p>

c) fees; d) purchases of equipment or services; and e) time required to comply with the requirements.	
Benefits the regulatory change is designed to produce.	Requiring a notification to property owners is likely to provide consumers with knowledge of invasive plant species that will be planted on their property. The notification will direct the property owner to information on how to manage the plant species and provide the property owner with an opportunity to select another plant species instead of the invasive plant being proposed for installation.

### 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.*

There are no viable alternatives to this regulation. The promulgation of this regulation is required by Chapter 153 of the 2023 Acts of Assembly.

*If this analysis has been reported on the ORM Economic Impact form, indicate the tables on which it was reported. Information provided on that form need not be repeated here.*

### Regulatory Flexibility Analysis

*Consistent with § 2.2-4007.1 B of the Code of Virginia, describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the regulatory change.*

While the promulgation of this regulation is required by Chapter 153 of the 2023 Acts of Assembly, the agency, in its development of the regulation, considered the impact of the regulation on the regulated entities and has proposed notification and recordkeeping requirements that are intended to increase consumer awareness and assist the agency in verifying compliance with the regulation while minimizing the burden on regulated entities. The agency has proposed general requirements that will allow regulated entities flexibility in developing the written notifications and record maintenance methods they will utilize to comply with the proposed regulation. The agency determined that establishing less stringent requirements for small businesses is not necessary in light of the general requirements proposed in the regulation.

*If this analysis has been reported on the ORM Economic Impact form, indicate the tables on which it was reported. Information provided on that form need not be repeated here.*



## Periodic Review and Small Business Impact Review Report of Findings

*If you are using this form to report the result of a periodic review/small business impact review that is being conducted as part of this regulatory action, and was announced during the NOIRA stage, indicate whether the regulatory change meets the criteria set out in EO 19 and the ORM procedures, e.g., is necessary for the protection of public health, safety, and welfare; minimizes the economic impact on small businesses consistent with the stated objectives of applicable law; and is clearly written and easily understandable. In addition, 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.*

This form is not being used to report the result of a periodic review or small business impact review.

## Public Comment

*Summarize all comments received during the public comment period following the publication of the previous stage, and provide the agency’s response. Include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. If no comment was received, enter a specific statement to that effect.*

The agency received five comments during the Notice of Intended Regulatory Action (NOIRA) public comment period.

<b>Commenter</b>	<b>Comment</b>	<b>Agency response</b>
Peter Clark	The commenter supports efforts to raise awareness of the issues related to invasive species and their sale.	The proposed regulation requires tradespersons to notify property owners when they propose to install invasive plants or prior to installing invasive plants on property in Virginia.
Anonymous	The commenter stated that invasive plant species cause economic and environmental damage.	The proposed regulation requires tradespersons to notify property owners when they propose to install invasive plants or prior to installing invasive plants on property in Virginia.
Mary Dudley McLean	The commenter shared their knowledge and experience with invasive plant species and stated that consumers need to be warned of the dangers of invasive plants.	The proposed regulation requires tradespersons to notify property owners when they propose to install invasive plants or prior to installing invasive plants on property in Virginia.
Sheryl Smith	The commenter suggests that the notification should:	The proposed regulations require that the notification be in writing, list each invasive species being proposed or installed and each



	<ul style="list-style-type: none"> <li>• Be 8.5x11 inches, 16 point or larger font,</li> <li>• Have no space for advertising for tradespersons,</li> <li>• Be separate for each species,</li> <li>• Include species-specific information,</li> <li>• State the impacts that each species has had in Virginia,</li> <li>• State the invasive characteristics of each species,</li> <li>• Include a photo of each species, and</li> <li>• Include a Virginia native plant alternative.</li> </ul>	<p>species' invasiveness rank, and provide general information on characteristics and management of invasive plant species. The proposed regulations do not prescribe font size or formatting for the required notification or require the notification to include photos of invasive plant species.</p>
<p>Margaret Fisher</p>	<p>The commenter requested that written material be printed and delivered separately from other materials provided to the property owner. The commenter also recommended multiple font size and layout suggestions for the notification structure and suggested that the notice include statements regarding the consequences of invasive plant species and photos of invasive plants. The commenter suggested that the decision-maker for the property should be the person who receives the notification.</p>	<p>The proposed regulations require that the notification be in writing, list each invasive species being proposed or installed and each species' invasiveness rank, and provide general information on characteristics and management of invasive plant species. The proposed regulations do not prescribe font size or formatting for the required notification or require the notification to include photos of invasive plant species.</p>

**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.*

The Board 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, (iii) the potential impacts of the regulation, and (iv) the agency's regulatory flexibility analysis stated in that section of this background document.

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  
 102 Governor St.  
 Richmond, Virginia 23219  
 (Phone) 804-786-3515  
 (Fax) 804-371-7793  
[david.gianino@vdacs.virginia.gov](mailto: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 this stage of this regulatory action.

### Detail of Changes

*List all regulatory changes and the consequences of the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Use all tables that apply, but delete inapplicable tables.*

**Table 2: Promulgating New VAC Chapter(s) without Repeal and Replace**

<b>New chapter-section number</b>	<b>New requirements to be added to VAC</b>	<b>Other regulations and laws that apply</b>	<b>Change, intent, rationale, and likely impact of new requirements</b>
455-10	The proposed section establishes definitions.	None	The proposed definitions will assist the regulated industry in understanding the regulation. The section lists applicable and relevant definitions. This section defines terms including “notification,” “proposal,” and “tradesperson.”
455-20	The proposed section establishes written notification requirements for tradespersons. The proposed section establishes who must receive the notification, when a tradesperson must provide the notification, and what must be included in the notification.	None	The proposed section is intended to establish the required components of the notification that tradespersons are required to provide to property owners. Additionally, the section is intended to clarify the timing of when notifications must be provided to property owners.
455-30	The proposed section establishes a recordkeeping requirement for tradespersons. The section requires tradespersons to retain notifications that were	None	The proposed section provides recordkeeping requirements to assist the agency in determining a tradesperson’s compliance with the notification requirement.

	provided to property owners for a period of not less than two years. Additionally, the tradesperson must make these notifications available to the Commissioner, if requested.		
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