



Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Department of Agriculture and Consumer Services
Virginia Administrative Code (VAC) citation	2 VAC 5-317
Regulation title	Regulations for Enforcement of the Noxious Weed Law
Action title	Proposal to establish regulations to eradicate, suppress, and prevent the dissemination of noxious weeds in the Commonwealth
Date this document prepared	April 18, 2011

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Purpose

Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.

The proposed action seeks to establish regulations to eradicate, suppress, and prevent the dissemination of noxious weeds in the Commonwealth by (i) establishing a list of plants deemed by the Board of Agriculture and Consumer Services (Board) to be noxious weeds, (ii) prohibiting the movement of noxious weeds or articles capable of transporting noxious weeds into or within the Commonwealth, and (iii) providing guidelines for the eradication of certain noxious weeds. This action is necessary to protect Virginia's natural and agricultural resources, including native plants, commercial crops, other desirable plants, livestock, surface waters, etc., from the detrimental impact of noxious weeds. If allowed to become established, noxious weeds can grow rapidly, are typically harmful to the local environment, and can lead to significant economic losses due to associated eradication and control costs.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency,

board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

The Virginia Department of Agriculture and Consumer Services (VDACS) administers the provisions of the Noxious Weed Law (Law), § 3.2-800 et seq., Code of Virginia (Code). Section 3.2-802 of the Code authorizes the Board to establish regulations under which certain plants can be listed as noxious weeds. Moreover, the Board may adopt regulations pertaining to regulated articles and conditions of movement, under which the Commissioner of Agriculture and Consumer Services (Commissioner) may proceed to eradicate or suppress and prevent the dissemination of noxious weeds in the Commonwealth. The Board may also adopt regulations governing the movement of regulated articles entering the Commonwealth from other locations. This authority is discretionary.

Need

Please detail the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. In addition, delineate any potential issues that may need to be addressed as the regulation is developed.

This proposed action is necessary to protect the Commonwealth’s agricultural and natural resources from the detrimental and highly-invasive characteristics of noxious weeds. Most noxious weeds are non-native exotics with very few or no natural predators to impede their rapid rate of growth. As a result, noxious weeds can grow rapidly and displace native plants. In addition, the habitat of wildlife can be altered as these plants invariably change the ecosystem by out-competing and displacing native plants. Eradication of noxious weeds may not be feasible once populations have become established and widespread; this regulation will allow the Commonwealth to conduct efforts to prevent establishment of listed noxious weeds in Virginia. VDACS is not aware of any potential issues that may need to be addressed as the regulation is developed.

Substance

Please detail any changes that will be proposed. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed.

The proposed action seeks to:

1. Establish a list of plants deemed by the Board to be noxious weeds,
2. Prohibit the movement of noxious weeds or articles capable of transporting noxious weeds into or within the Commonwealth, and
3. Provide guidelines for the eradication of noxious weeds.

Alternatives

Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action. Also, please describe the process by

which the agency has considered or will consider other alternatives for achieving the need in the most cost-effective manner.

The Commissioner of VDACS is authorized under the Virginia Plant Pest Law, § 3.2-700 et seq. of the Code, to carry out operations to locate, suppress, control, eradicate, prevent, or retard the spread of plant pests. The Plant Pest Law also allows the Commissioner to quarantine sections of the Commonwealth to limit the movement of regulated articles that are capable of transporting plant pests of concern. However, the Plant Pest Law does not authorize the Commissioner to limit the movement or eradication of noxious weeds which negatively impact other natural resources such as surface waters, livestock, land, or other property. No other viable alternative exists that will protect these other valuable resources in a cost-effective manner.

Public participation

Please indicate whether the agency is seeking comments on the intended regulatory action, including ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Also, indicate whether a public hearing is to be held to receive comments on this notice.

The agency is seeking comments on the intended regulatory action, including but not limited to 1) ideas to assist in the development of a proposal, 2) the costs and benefits of the alternatives stated in this background document or other alternatives and 3) potential impacts of the regulation. The agency is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping, and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit comments may do so via the Regulatory Town Hall website, www.townhall.virginia.gov, or by mail, email, or fax to:

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Written comments must include the name and address of the commenter. In order to be considered, comments must be received by the last day of the public comment period. No public hearing will be held on this notice.

Participatory approach

Please indicate, to the extent known, if advisers (e.g., ad hoc advisory committees, regulatory advisory panels) will be involved in the development of the proposed regulation. Indicate that 1)

the agency is not using the participatory approach in the development of the proposal because the agency has authorized proceeding without using the participatory approach; 2) the agency is using the participatory approach in the development of the proposal; or 3) the agency is inviting comment on whether to use the participatory approach to assist the agency in the development of a proposal.

The agency will use the participatory approach in the development of proposed regulations and will seek comments on the intended regulatory action. Plant species proposed for inclusion in the list of noxious weeds will be developed in consultation with stakeholders.

Family impact

Assess the potential impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one’s spouse, and one’s children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

This proposed action is not expected to have an impact on the institution of family or family stability.