



Economic Impact Analysis Virginia Department of Planning and Budget

2 VAC 5-317 – Regulations for Enforcement of the Noxious Weed Law
Department of Agriculture and Consumer Services
October 8, 2012

Summary of the Proposed Regulation

The Virginia Department of Agriculture and Consumer Services (VDACS) proposes to promulgate new regulations to enforce the noxious weed law passed by the General Assembly in 1970. In these regulations, VDACS will:

- § Create a definitions section for terms used throughout the regulation including a definition of noxious weed,
- § Establish two tiers of noxious weeds: Tier 1 weeds could likely be eradicated or suppressed, while Tier 2 weeds would be more likely to be suppressed rather than eradicated,
- § Prohibit the movement of a listed noxious weed, or any article known to be infested with a noxious weed, unless VDACS issues a permit for such movement,
- § Establish conditions that must be satisfied before VDACS would issue a permit for the movement of noxious weeds,
- § Mandate that the limited permit be applied for no fewer than five business days before the regulated article is to be moved,
- § Require that the regulated article be assembled in accordance with what the inspector deems necessary to facilitate inspection,

- § Establish requirements for the attachment of a certificate or permit to the article being moved. This would include a shipper's retention requirement at the place of the shipment and
- § Authorize VDACS inspectors to stop and inspect, and to seize, destroy, or otherwise dispose of, articles regulated under these proposed regulations. This authorization repeats powers that agents of the VDACS Commissioner more generally have been given by Code of Virginia §3.2-805.

Result of Analysis

There is insufficient information to ascertain whether benefits will outweigh costs for this regulatory action.

Estimated Economic Impact

As allowed by §3.2-802 of the Code of Virginia, the Virginia Department of Agriculture and Consumer Services (VDACS) proposes to promulgate new regulations to prevent plants on the noxious weed list from taking hold through regulation of movement of such plants and eradication or suppression efforts. With these regulations, the Board proposes to set a list of plants that qualify as noxious weeds, prohibit the movement of listed plants into, out of or within the state without a permit issued by a VDACS inspector. The Board also proposes to set criteria for issuance of permits which include that the plants to be moved are packaged and handled in such a way that movement will not spread the plant, that any additional conditions that the inspector deems necessary to minimize the risk of spreading the plant are followed and that the plant is not subject to any other quarantines within the state.

VDACS reports that they do not charge fees for their inspection of noxious weeds and/or other items that may be infested by noxious weeds nor do they charge a fee for the permits that will be required to transport noxious weeds or "any article or means of conveyance known to be infested or determined by an inspector to present a risk of spreading a listed noxious weed". Entities would likely incur some costs for time spent applying for permits and facilitating inspections. VDACS further reports that, at this time, they do not have the power to fine entities that move regulated items without the required permit (although the Commissioner of VDACS or his designee may, according to §3.2-805, "stop delivery, stop sale, seize, destroy, treat, or order returned to the point of origin, at the owner's expense, any noxious weed, article, or

substance whatsoever, if transported or moved within the Commonwealth, or if existing on any premise, or brought into the Commonwealth from any place outside thereof, if such is found by him to be infested with any noxious weed”). Plants that are on the noxious weed list that are being transported into the state would be inspected in the originating state by that state’s Department of Agriculture which may charge a fee for that service. Additionally, affected entities may incur costs associated with eradicating or suppressing noxious weeds found on their land and may incur loss of income if otherwise salable items, including agricultural products, are determined to be infested with, or at risk of spreading, a listed noxious weed. In this case, these items would not be able to be transported or sold so the owner of these items would lose the value that he would have otherwise gained from that sale. These costs may be weighed against the benefit of eradicating completely or controlling the spread of plants that have been deemed noxious weeds. As these are new regulations, there is insufficient information to measure the magnitude of costs and benefits for this proposed regulatory action.

Businesses and Entities Affected

VDACS believes that mainly landowners may be affected by these proposed regulations.

Localities Particularly Affected

No locality is likely to be particularly affected by these proposed regulations.

Projected Impact on Employment

There is currently insufficient information to project the impact that these proposed regulations may have on employment in the Commonwealth.

Effects on the Use and Value of Private Property

Individuals whose land is determined to be infested with a noxious weed may see the value of that land fall, at least temporarily, until eradication or suppression efforts can be undertaken.

Small Businesses: Costs and Other Effects

To the extent that these regulations lead to the quarantine of otherwise salable items that have been determined by VDACS to either be infested with a noxious weed or to present a risk of spreading a noxious weed, the individuals or businesses that own those items would likely lose their value.

Small Businesses: Alternative Method that Minimizes Adverse Impact

There is likely no alternate method for meeting VDACS' goals that would further minimize costs.

Real Estate Development Costs

To the extent that undeveloped real estate is infested with a noxious weed, real estate development costs may increase because land owners would likely be responsible for the costs of eradication or suppression: VDACS might undertake eradication/suppression actions but the agency would decide on a case by case basis whether to do so. Owners of affected land would likely also incur implicit and explicit costs (costs for rental equipment sitting idle, for instance) associated with delays in their schedule for development.

Legal Mandate

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with Section 2.2-4007.H of the Administrative Process Act and Executive Order Number 21 (02). Section 2.2-4007.H requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has adverse effect on small businesses, Section 2.2-4007.H requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.