



Virginia Department of Planning and Budget **Economic Impact Analysis**

2 VAC 5-317 Regulations for the Enforcement of the Noxious Weeds Law

Department of Agriculture and Consumer Services

Town Hall Action/Stage: 5747/9551

April 20, 2023; amended April 21, 2023 to reflect more accurate information on *Trapa bispinosa*.

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia (Code) and Executive Order 19. The analysis presented below represents DPB’s best estimate of these economic impacts.¹

Summary of the Proposed Amendments to Regulation

The Board of Agricultural and Consumer Services (Board) proposes to add 12 plants to the noxious weeds list.

Background

Virginia Code § 3.2-800 defines “noxious weed” to mean

any living plant, or part thereof, declared by the Board through regulations under this chapter to be detrimental to crops, surface waters, including lakes, or other desirable plants, livestock, land, or other property, or to be injurious to public health, the environment, or the economy, except when in-state production of such living plant, or part thereof, is commercially viable or such living plant is commercially propagated in Virginia.

Plants that are classified as noxious weeds are prohibited from moving into or within the state without a permit.² Noxious weeds are classified as either Tier 1, Tier 2, or Tier 3 noxious weeds.

¹ Code § 2.2-4007.04 requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the analysis should include but not be limited to: (1) the projected number of businesses or other entities to whom the proposed regulatory action would apply, (2) the identity of any localities and types of businesses or other entities particularly affected, (3) the projected number of persons and employment positions to be affected, (4) the projected costs to affected businesses or entities to implement or comply with the regulation, and (5) the impact on the use and value of private property.

² Chapter 123 of the 2023 *Acts of Assembly* creates an exemption to the definition of the verb move; “except for bona fide agricultural purposes including the management, tilling, planting, or harvesting of agricultural products.” See <https://leg1.state.va.us/cgi-bin/legp504.exe?231+ful+CHAP0153>.

Tier 1 noxious weeds are not known to occur in Virginia and are therefore more easily eradicated. Tier 2 noxious weeds are present in the Commonwealth, for which successful eradication or suppression is feasible. Lastly, Tier 3 noxious weeds are present in the Commonwealth, for which successful eradication or suppression is not feasible, but whose spread may be slowed down by restrictions on their movement.³

Virginia Code § 3.2-802 requires the Virginia Department of Agriculture and Consumer Services (VDACS) Commissioner to establish an advisory committee to conduct a scientific risk assessment of plants that are proposed to be included on the noxious weeds list.⁴ The last meeting of this committee was held in November 2022,⁵ though the weeds that are being added in this current action were discussed at various advisory committee meetings between September 2019 and June 2021.⁶ Accordingly, the Board is now proposing to add one species to the list of Tier 2 noxious weeds, *Trapa bispinosa*, Two horned trapa. Additionally, the Board is also proposing to add eleven species to the list of Tier 3 noxious weeds: (i) *Alliaria petiolata*, Garlic mustard; (ii) *Dioscorea polystachya*, Chinese yam; (iii) *Elaeagnus umbellata*, Autumn olive; (iv) *Ficaria verna*, Lesser celandine; (v) *Lespedeza bicolor*, Bicolor lespedeza; (vi) *Lonicera maackii*, Amur honeysuckle; (vii) *Lonicera japonica*, Japanese honeysuckle; (viii) *Phragmites australis*, Common reed; (ix) *Pueraria montana*, Kudzu; (x) *Reynoutria japonica*, Japanese knotweed; and (xi) *Ulmus pumila*, Siberian elm. Only one comment was received following publication of the NOIRA stage; that commenter expressed general support for adding new weeds to the list.⁷

Estimated Benefits and Costs

VDACS reports that the 12 plant species recommended for listing as a noxious weed are all invasive plant species; they are highly adaptable to their environment, are copious seed

³ VDACS' website includes resources on identifying some of the noxious weeds. See <https://www.vdacs.virginia.gov/plant-industry-services-noxious-weeds.shtml>.

⁴ See <https://law.lis.virginia.gov/vacode/title3.2/chapter8/section3.2-802/>.

⁵ See <https://townhall.virginia.gov/L/ViewMeeting.cfm?MeetingID=36887>.

⁶ The minutes for these meetings are available on the Virginia Regulatory Town Hall at https://townhall.virginia.gov/L/GetFile.cfm?File=Meeting\48\29696\Minutes_VDACS_29696_v1.pdf (September 30, 2019 committee meeting); https://townhall.virginia.gov/L/GetFile.cfm?File=Meeting\48\31465\Minutes_VDACS_31465_v1.pdf (October 23, 2020 committee meeting); https://townhall.virginia.gov/L/GetFile.cfm?File=meeting\48\32314\Minutes_VDACS_32314_v3.pdf (April 22, 2021 committee meeting); and https://townhall.virginia.gov/L/GetFile.cfm?File=meeting\48\32630\Minutes_VDACS_32630_v1.pdf (June 29, 2021 committee meeting).

⁷ See <https://townhall.virginia.gov/l/viewcomments.cfm?commentid=99895>.

producers, and have an ability to displace native plant species through aggressive and rapid growth.⁸ Controlling invasive plants is costly and requires efforts over a long period of time once they become established. Adding these 12 plants to the noxious weeds list would serve to prevent their introduction to un-infested areas within the Commonwealth and slow the spread from areas that are currently infested.

Adding these 12 plants to the list would require anyone seeking to move these plants to first obtain a permit from VDACS.⁹ There are no fees associated with the permit application. The permits for Tier 1 and Tier 2 noxious weeds require compliance with specific best management practices, such as double bagging plant parts that will be removed from a site. The permits for Tier 3 noxious weeds do not contain any requirements; they only suggest best management practices to prevent any inadvertent spread of these plants.

VDACS expects to absorb any costs associated with implementing the proposed changes. VDACS reports that their Office of Plant Industry Services (OPIS) communicates additions to the Noxious Weeds List by several means: via direct communication to the Virginia Nursery and Landscape Association; to VDACS-registered nursery growers and dealers via both a direct mailing and OPIS's 15 plant protection inspectors, who communicate directly with growers; through cooperative extension agents at Virginia Tech; through press releases; and on VDACS' webpage.

The noxious weeds list currently has 14 plants (three Tier 1, six Tier 2, five Tier 3) so adding 12 plants would almost double the size of the list. Over the past five years, VDACS has issued a total of 10 permits. Hence, although an increase in the size of the list may increase the number of permit applications, the additional costs of processing permit applications may not be significant.

Businesses and Other Entities Affected

VDACS reports that permit requests are likely to come from private landowners, construction companies, farmers, landscapers, and university researchers/faculty.¹⁰ The agency notes that the regulations do not require a landowner to remove those plant species from their

⁸ Agency Background Document (ABD), page 4. See https://townhall.virginia.gov/l/GetFile.cfm?File=48\5747\9551\AgencyStatement_VDACS_9551_v2.pdf.

⁹ The form can be found at <https://www.vdacs.virginia.gov/pdf/noxious-weed-permit.pdf>.

¹⁰ Email dated April 10, 2023.

property. In the past, the entities that have sought permits most routinely are either researchers at universities who want to confirm noxious weeds through identification of the plant at their lab, or construction contractors who request movement permits to remove the plants from a property prior to construction. The permits issued to construction contractors are issued for safe removal of the plants from the site to a landfill to ensure the plant is not spread during or after transport. VDACS reports that seven of the 10 permits issued in the last five years were for construction, two were for research, and one was for personal removal from an individual's property.¹¹

The proposed changes would lead to an increase in the number of researchers, construction companies, individual landowners, or other entities seeking to move any of the 12 plants that would be added to the noxious weeds list. However, the majority of these new permits would be for Tier 3 weeds, since all but one of the new additions to the list are in Tier 3. Permits for Tier 3 weeds only contain suggested best management practices and do not have any enforceable requirements. The newly added Tier 2 noxious weed (*Trapa bispinosa*) is an aquatic weed found primarily in lakes and ponds. As such, it is unlikely that construction companies will need to remove this plant from construction sites or incur related costs unless the construction activities involve artificial or natural lakes or ponds that were infested with this plant.

The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.¹² An adverse impact is indicated if there is any increase in net cost or reduction in net revenue for any entity, even if the benefits exceed the costs for all entities combined. Because some researchers, construction companies, individual landowners, or other entities may have to obtain a permit to move noxious weeds whereas previously no permit would have been required, and because some of those entities could incur additional costs to comply with the requirements for transporting the newly added Tier 2 noxious weed (*Trapa bispinosa*), an adverse impact is indicated. However, entities like landowners or construction companies

¹¹ Email dated April 19, 2023.

¹² Pursuant to Code § 2.2-4007.04(D): In the event this economic impact analysis reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, the Department of Planning and Budget shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance. Statute does not define "adverse impact," state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation.

would only incur these costs if they choose to move these plants. As mentioned previously, the regulation does not require landowners to clear noxious weeds from their property.

Small Businesses¹³ Affected:¹⁴

Types and Estimated Number of Small Businesses Affected

VDACS does not have estimates for the number of small businesses that would be affected by the proposed changes. It is possible that some of the construction contractors mentioned previously are small businesses.

Costs and Other Effects

Some of these businesses would face some minimal administrative costs of applying for an obtaining a permit. Any small businesses that need to move *Trapa bispinosa* would also face some additional cost of implementing the Tier 2 permit requirements.

Alternative Method that Minimizes Adverse Impact

There are no known alternative methods that would prevent the spread of noxious weeds at lower cost to small businesses.

Localities¹⁵ Affected¹⁶

The proposed amendments do not create costs for local governments.

Projected Impact on Employment

The proposed amendments are unlikely to significantly affect total employment.

¹³ Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as “a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.”

¹⁴ If the proposed regulatory action may have an adverse effect on small businesses, Code § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to Code § 2.2-4007.1, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.

¹⁵ “Locality” can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

¹⁶ Code § 2.2-4007.04 defines “particularly affected” as bearing disproportionate material impact.

Effects on the Use and Value of Private Property

The proposed amendments are intended to protect the economic value of private property by preventing and controlling the spread of noxious weeds. Real estate development costs do not appear to be affected.