



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

2 VAC 5-455 Regulations for Tradespersons Installing Invasive Plant Species
Department of Agriculture and Consumer Services
Town Hall Action/Stage: 6312 / 10451
December 12, 2024

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 the potential economic impacts as of the date of this analysis.¹

Summary of the Proposed Amendments to Regulation

The Board of Agriculture and Consumer Resources (Board) seeks to adopt a new regulation as required by Chapter 153 of the 2023 *Acts of Assembly*. The regulation would require tradespersons who are involved with proposing or installing plants to provide a written notification to property owners for all plants proposed for installation that are included on the list of invasive plants established by the Department of Conservation and Recreation (DCR).

Background

Chapter 153 of the 2023 *Acts of Assembly* directed DCR to create a list of invasive plant species² no later than January 1, 2024, and directed 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

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 See <https://www.dcr.virginia.gov/natural-heritage/invspdflist>. See also <https://www.invasivespeciesva.org/about-working-group>.

of invasive plants established in § 10.1-104.6:2.”³ Accordingly, the proposed regulation would (i) define key terms, including “invasive plant species,” “installation,” and “tradesperson,”⁴ (ii) specify the intended recipient, the timing, and the contents of the required notification, and (iii) require tradespersons who propose and install plants to maintain a copy of the notification for two years, and to make such copies available for inspection by the Commissioner of the Virginia Department of Agriculture and Consumer Services (VDACS) upon request.

Estimated Benefits and Costs

VDACS reports that there are several commonly used landscape plants that are included on DCR’s list and, when not properly managed, can be challenging or costly to control. Such plants could impact the property owner and, if allowed to grow uncontrolled, could impact neighboring properties as well. Invasive plants also have the potential to negatively impact native ecosystems by replacing native species of plants and reducing food sources and habitat for native wildlife. The proposed regulation would benefit property owners by informing them that certain plants being proposed or installed on their property are invasive. The required notification may further benefit property owners, neighboring landowners, as well as the native ecosystem if the owners decide not to install the invasive species and instead work with the tradesperson to use native plants or other alternatives.

Tradespersons, defined as “any person who, for compensation, proposes plants for installation, or installs plants,” would incur some costs to (i) provide the written notification for each instance that they propose or install one or more plants on DCR’s invasive species list, and (ii) maintain a record of having provided the notification for at least two years. Under this definition, “tradespersons” would include landscape architects and landscape designers, who may propose certain plants but are likely to be subcontracted and may not directly interact with the property owner, as well as landscaping businesses, contract grounds maintenance crews, or other individuals who directly install plants. VDACS reports that such individuals are not currently required to be registered with the agency and may not be aware of the legislation and proposed regulation. Thus, both the level of compliance as well as the costs of compliance are difficult to estimate.

³ See <https://legacylis.virginia.gov/cgi-bin/legp604.exe?231+ful+CHAP0153>

⁴ The definition of invasive plant species would directly refer to the DCR list, which can be found at <https://www.dcr.virginia.gov/natural-heritage/invspdflist>.

VDACS intends to provide information about this regulation on their website and perform outreach. In addition, VDACS reports that the enforcement of this regulation will also be driven by reports of non-compliance, which they intend to investigate and, at least initially, remedy by educating the individuals involved on the requirements.

Businesses and Other Entities Affected

The proposed regulation would affect all individuals and entities who, for compensation, propose and/or install plants. Such tradespersons would include landscape architects, who are licensed by the Department of Professional and Occupational Regulation (DPOR); DPOR reports that there were 984 licensed landscape architects as of December 2024.⁵ In addition, as mentioned previously, landscape designers, landscaping businesses, contract ground maintenance crews, and other individuals who meet the definition of a tradesperson would also be affected by the proposed requirements to the extent that they propose and/or install plants that are on DCR's invasive species list.

The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.⁶ An adverse impact is indicated if there is any increase in net cost or reduction in net benefit for any entity, even if the benefits exceed the costs for all entities combined.⁷ The proposed regulation would include new requirements for individuals and businesses, for which they will likely incur some cost. However, the proposed requirements directly stem from the legislative mandate. Thus, an adverse impact from the regulatory proposal is not indicated.

⁵ Source: https://www.dpor.virginia.gov/sites/default/files/Records%20and%20Documents/reg_pop.pdf.

⁶ 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.

⁷ 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. As a result, DPB has adopted a definition of adverse impact that assesses changes in net costs and benefits for each affected Virginia entity that directly results from discretionary changes to the regulation.

Small Businesses⁸ Affected:⁹

The proposed amendments create new costs for tradespersons that propose and/or install plants on DCR's invasive species list. However, as mentioned previously, any such costs arise from the legislative mandate.

Types and Estimated Number of Small Businesses Affected

As mentioned previously, VDACS does not have an estimate on the total number of tradespersons that would be affected.

Costs and Other Effects

Tradespersons affected by the proposed requirements would incur costs relating to (i) providing the required notification and (ii) maintaining a record of notifications provided for two years.

Alternative Method that Minimizes Adverse Impact

There are no clear alternative methods that both reduce adverse impact and meet the intended policy goals. For instance, VDACS could remove the recordkeeping requirement, since it is not directly mentioned in statute; however, this would make it impossible to determine noncompliance and would prevent enforcement of the statutory requirements.

Localities¹⁰ Affected¹¹

The proposed regulation does not disproportionately affect particularly localities or affect costs for local governments.

⁸ 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.”

⁹ 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.

¹⁰ “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.

¹¹ § 2.2-4007.04 defines “particularly affected” as bearing disproportionate material impact.

Projected Impact on Employment

The proposed regulation is unlikely to affect total employment.

Effects on the Use and Value of Private Property

The proposed regulation could increase the value of private property to the extent that the newly required notification enables owners to either anticipate the risks of invasive plants to their property or neighboring properties and take measures to control them or else avoid installing them on their property altogether. The proposed regulation may also decrease real estate development costs to the extent that developers in receipt of a notification choose to avoid installing invasive species.