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Final Regulation Agency Background Document

Agency name	Board of Agriculture and Consumer Services
Virginia Administrative Code (VAC) citation(s)	2 VAC 5-317
Regulation title(s)	Regulations for Enforcement of the Noxious Weeds Law
Action title	Proposal to add six plant species to the noxious weed list.
Date this document prepared	December 13, 2019

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1 VAC7-10), and the *Virginia Register Form, Style, and Procedure Manual for Publication of Virginia Regulations*.

Brief Summary

Please 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.

Section 3.2-802 of Virginia's Noxious Weeds Law (Va. Code § 3.2-800 et seq.) (Law) provides authority to the Board of Agriculture and Consumer Services to establish by regulation those weeds deemed to be noxious weeds.

Virginia's *Regulations for the Enforcement of the Noxious Weeds Law* (2 VAC 5-317) classifies noxious weed species based on populations of such weed species and the degree to which the weed species can be suppressed or eradicated in Virginia. The noxious weed species are categorized as Tier 1, Tier 2, or Tier 3, with Tier 1 noxious weeds being those noxious weeds that are not known to occur in Virginia and are, therefore, more easily eradicated. Tier 2 noxious weeds are those that are present in the Commonwealth and for which successful eradication or suppression is feasible. Tier 3 noxious weeds are those that are present in the Commonwealth and not listed as a Tier 1 or Tier 2 noxious weed and are, generally, more prevalent in the Commonwealth than those noxious weeds in the other two tiers. The regulation currently lists three plant species as Tier 1 noxious weeds and five species as Tier 2 noxious weeds. No plant species is currently listed as a Tier 3 noxious weed. Prior to the 2016 Session of the

General Assembly, the definition of “noxious weed” in the Law was such that only those plant species that were “not widely disseminated” in Virginia could be listed as a noxious weed. Chapter 171 of the 2016 Acts of Assembly amended the definition of “noxious weed” by removing the “not widely disseminated” condition and excluding from eligibility for declaration as a noxious weed those living plants or parts thereof for which in-state production is commercially viable or that are commercially propagated in Virginia, thereby allowing the listing of certain plant species that are prevalent in Virginia.

This regulatory action amends *Regulations for the Enforcement of the Noxious Weeds Law* (2 VAC 5-317) by adding six plant species to the current noxious weed list and by amending the definition of a “Tier 3 noxious weed” to “any noxious weed (i) that is present in the Commonwealth, (ii) whose spread may be slowed by restrictions on its movement, and (iii) for which successful eradication or suppression is not feasible.”

Acronyms and Definitions

Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the “Definition” section of the regulations.

“Board” means the Board of Agriculture and Consumer Services.

“VDACS” means the Virginia Department of Agriculture and Consumer Services.

“Noxious weeds” means any living plant, or part thereof, declared by the Board through regulations adopted pursuant to the Law 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.

Statement of Final Agency Action

Please provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) the name of the agency taking the action; and 3) the title of the regulation.

On December 12, 2019, the Board adopted as final amendments to 2 VAC 5-317 *et seq.*, *Regulations for Enforcement of the Noxious Weed Law*.

Mandate and Impetus

Please list all changes to the information reported on the Agency Background Document submitted for the previous stage regarding the mandate for this regulatory change, and any other impetus that specifically prompted its initiation. If there are no changes to previously-reported information, include a specific statement to that effect.

There are no changes to the previously-reported information.

Legal Basis

Please identify (1) the agency or other promulgating entity, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia or Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency or promulgating entity’s overall regulatory authority.

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.

VDACS administers provisions of the Law. Section 3.2-802 of the Law authorizes the Board to establish regulations under which certain plants can be listed as noxious weeds. *Regulations for the Enforcement of the Noxious Weeds Law*, 2 VAC 5-317-100, establishes a Noxious Weed Advisory Committee to assist in the evaluation and risk-assessment of plant species that may be declared noxious weeds.

Purpose

Please 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’s intended to solve.

The intent of the regulatory action is to slow the spread of noxious weeds established in Virginia and prevent the introduction of those listed weed species that are not known to occur into the Commonwealth.

This regulatory action is necessary to protect the Commonwealth’s agricultural and natural resources from the detrimental impact of noxious weeds. Listed noxious weeds are non-native, invasive plants with very few or no natural predators or existing environmental conditions to control their rapid rate of growth. As a result, noxious weeds can grow rapidly and displace native plants. In addition, the habitat of wildlife may be altered as these plants invariably change the ecosystem by out-competing and displacing native plants. As the spread of a noxious weed can lead to significant economic losses due to associated eradication and control costs, this regulation also assists in protecting the economic welfare of citizens.

Substance

Please 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.

The regulatory action adds six plant species deemed by the Board to meet the definition of “noxious weed,” to Section 20 of 2 VAC 5-317. The intent of listing these six plants as noxious weeds is to prevent further introductions or slow the spread of existing populations into the Commonwealth. In addition, the definition of “Tier 3 noxious weed” in Section 10 has been amended to clarify the current definition.

Issues

Please 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.

The six plant species recommended for listing as a noxious weed are all invasive plant species; they are highly adaptable to their environment, are copious seed producers, and have an ability to displace native plant species through aggressive and rapid growth. Controlling noxious weeds is costly and long term once they become established.

Adding the six plants provides an advantage to citizens, as the regulation will serve to prevent the introduction of noxious weeds to un-infested areas or slow the spread from areas that are currently infested. Movement of a listed noxious weed will require that citizens obtain a VDACS permit to minimize the risk associated with moving a listed noxious weed; the intent of the permit is to provide suggested best practices for the movement of the Tier 3 noxious weed that will prevent the inadvertent spread of these plants. There are no disadvantages to the public or the Commonwealth as a result of this regulatory action.

Requirements More Restrictive than Federal

Please list all changes to the information reported on the Agency Background Document submitted for the previous stage regarding any requirement of the regulatory change which is more restrictive than applicable federal requirements. If there are no changes to previously-reported information, include a specific statement to that effect.

There are no requirements that exceed applicable federal requirements.

Agencies, Localities, and Other Entities Particularly Affected

Please list all changes to the information reported on the Agency Background Document submitted for the previous stage regarding any other state agencies, localities, or other entities that are particularly affected by the regulatory change. If there are no changes to previously-reported information, include a specific statement to that effect.

There are no changes to previously-reported information. No other state agency, locality, or other entity will be particularly affected by these amendments.

Public Comment

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

No comments were received during the public comment period covering July 8, 2019, to September 6, 2019. Additionally, no comments were received during the public hearing held on July 23, 2019.

Detail of Changes Made Since the Previous Stage

Please list all changes made to the text since the previous stage was published in the Virginia Register of Regulations and the rationale for the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. * Please put an asterisk next to any substantive changes.

No changes were made to the proposed amendments since the previous stage.

Detail of All Changes Proposed in this Regulatory Action

Please list all changes proposed in this action and the rationale for the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. * Please put an asterisk next to any substantive changes.

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
10	NA	The current definition of a Tier 3 noxious weed is “any noxious weed that is present in the Commonwealth and not listed as a Tier 1 or Tier 2 noxious weed.”	The proposed definition for the term “Tier 3 noxious weed” is “any noxious weed (i) that is present in the Commonwealth, (ii) whose spread may be slowed by restrictions on its movement, and (iii) for which successful eradication or suppression is not feasible.”* The intent of the change is to clarify the current definition.
20 B	NA	This section states the plant species declared to be noxious weeds and places the weeds in one of two tiers.	The amendments add <i>Corydalis incisa</i> (Incised fumewort) to the list of Tier 2 noxious weeds.* The proposed amendments are intended to prevent or reduce the artificial spread of these invasive plant species that are present in the Commonwealth and for which successful eradication or suppression is feasible.
20 C	NA	While the current regulation establishes a third tier for noxious weeds, currently, no plant species is declared a Tier 3 noxious weed.	The amendments declare the following plant species as Tier 3 noxious weeds: 1. <i>Ailanthus altissima</i> , Tree of heaven 2. <i>Ampelopsis brevipedunculata</i> , Porcelain berry 3. <i>Celastrus orbiculatus</i> , Oriental bittersweet 4. <i>Hydrilla verticillata</i> , Hydrilla 5. <i>Persicaria perfoliata</i> , Mile-a-minute weed”.* The proposed amendments are intended to prevent or reduce the artificial spread of these invasive plant species (i) that are present in the Commonwealth, (ii) whose spread may be slowed by

			restrictions on their movement, and (iii) for which successful eradication or suppression is not feasible.
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