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Notice of Intended Regulatory Action (NOIRA) 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	Amend noxious weeds list
Date this document prepared	February 6, 2018

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Subject matter and intent

Please describe briefly the subject matter, intent, and goals of the planned regulatory action.

Section 3.2-802 of the Noxious Weeds Law (Law) gives authority to the Board of Agriculture and Consumer Services (Board) to designate plant species as noxious weeds. Under this authority, the Board promulgated 2 VAC 5-317, *Regulations for Enforcement of the Noxious Weeds Law*, which became effective in 2015 and lists eight plant species as noxious weeds.

The Board has determined it is now appropriate to consider amending the current list of noxious weeds, as the Board has not revised the list since it promulgated the regulation and Chapter 171 of the 2016 Acts of Assembly amended the Law's definition of "noxious weed."

Legal basis

Please identify the (1) the agency (includes any type of promulgating entity) and (2) the state and/or federal legal authority for the proposed regulatory action, including the most relevant citations to the Code

of Virginia or General Assembly chapter number(s), if applicable. Your citation should 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’s overall regulatory authority.

Section 3.2-109 of the Code of Virginia (Code) establishes the Board as a policy board.

Section 3.2-802 of the Law authorizes the Board to establish regulations under which certain plants may be listed as noxious weeds.

Purpose

Please describe 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, please explain any potential issues that may need to be addressed as the regulation is developed.

The proposed 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 establishment 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 that are being considered, the substantive changes to existing sections that are being considered, or both.

The Board has determined it is now appropriate to consider amending the current list of noxious weeds, which is established in Section 20 of this regulation, and any additional amendments it deems relevant to the revised list of noxious weeds.

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in § 2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.

The agency has determined that no alternative regulatory method will better accomplish the objectives of the Law and that exceptions for small businesses are not appropriate. The restriction of the movement of a listed noxious weed is necessary to prevent its dissemination in the Commonwealth, and the regulation is necessary to protect the Commonwealth’s agricultural and natural resources from the detrimental impact of noxious weeds. As the establishment 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.

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. Please include one of the following choices: 1) a panel will be appointed and the agency's contact if you're interested in serving on the panel is _____; 2) a panel will not be used; or 3) public comment is invited as to whether to use a panel to assist in the development of this regulatory proposal.

The agency is seeking comments on this regulatory action, including but not limited to: ideas to be considered in the development of this proposal, the costs and benefits of the alternatives stated in this background document or other alternatives, and the 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: projected reporting, recordkeeping, and other administrative costs; the probable effect of the regulation on affected small businesses; and the description of less intrusive or costly alternatives for achieving the purpose of the regulation.

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

Debra Martin
Program Manager, Office of Plant Industry Services
P.O. Box 1163
Richmond, VA 23218
Fax: 804-371-7793
Debra.Martin@vdacs.virginia.gov

Written comments must include the name and address of the commenter. In order to be considered, comments must be received by midnight on the last day of the public comment period.

Section 100 of the Noxious Weeds Regulation establishes a Noxious Weed Advisory Committee to assist in the evaluation and risk-assessment of plant species that may be declared noxious weeds. This committee has developed an online scientific risk assessment tool that is available via the agency's website: www.vdacs.virginia.gov/plant-industry-services-noxious-weeds.shtml. Individuals are encouraged to use this tool to provide information regarding potential plant species that the Board should consider for listing or delisting as a noxious weed.

A public hearing will be held following the publication of the proposed stage of this regulatory action, and notice of the hearing will be posted on the Virginia Regulatory Town Hall website (<http://www.townhall.virginia.gov>) and on the Commonwealth Calendar website (<https://www.virginia.gov/connect/commonwealth-calendar>). Both oral and written comments may be submitted at that time.