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Final Regulation Agency Background Document

Agency name	Board of Agriculture and Consumer Services
Virginia Administrative Code (VAC) Chapter citation(s)	2 VAC 5-455
VAC Chapter title(s)	Regulations for Tradespersons Installing Invasive Plant Species
Action title	Promulgate regulations governing the installation of invasive plant species by tradespersons in Virginia
Date this document prepared	September 29, 2025

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19, the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Brief Summary

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.

Chapter 153 of the 2023 Acts of Assembly amended the Noxious Weeds Law (Va. Code § 3.2-800 et seq.) (Law) to require the Board of Agriculture and Consumer Services (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 Virginia Department of Conservation and Recreation's (DCR) Virginia Invasive Plant Species List, established pursuant to Va. Code § 10.1-104.6:2. There are several commonly used landscape plants that are included on DCR's list, and, when not properly managed, these plants can be challenging to control and may impact the property owner or adjacent properties if the plants escape their containment.

The proposed regulation establishes definitions for "tradesperson," "notification," and "proposal" along with other important terms that define who is responsible for notifying property owners and under what

circumstances. The proposed regulation requires (i) a tradesperson to notify a property owner in writing at the time the tradesperson proposes to install an invasive plant species or prior to the installation of an invasive plant species on their property; (ii) specific information to be included on the notification; and (iii) a tradesperson to maintain documentation of notifications for at least one year from the date a proposal is accepted or from the date of installation.

Acronyms and Definitions

Define all acronyms used in this form, and any technical terms that are not also defined in the "Definitions" section of the regulation.

"Board" means the Board of Agriculture and Consumer Services.

"DCR" means the Virginia Department of Conservation and Recreation.

"VDACS" means the Virginia Department of Agriculture and Consumer Services.

Statement of Final Agency Action

Provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) that the agency has "adopted final amendments" to the regulation; 3) the name of the agency taking the action; and 4) the title of the regulation. A suggested statement is, "On [insert date] the Board/Department of [insert name] adopted final amendments to the [title of regulation(s)]."

On August 5, 2025, the Board of Agriculture and Consumer Services adopted final amendments to the *Regulations for Tradespersons Installing Invasive Plant Species*.

Mandate and Impetus

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 information reported in the "Mandate and Impetus" section of the Agency Background Document submitted for the previous stage of this regulatory action.

This regulatory action is mandated by Chapter 153 of the 2023 Acts of Assembly, which, in part, amended the Law to require 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 DCR's Virginia Invasive Plant Species List, established pursuant to Va. Code § 10.1-104.6:2.

Legal Basis

Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia and Acts of Assembly chapter

number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency 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 with the authority to adopt regulations in accordance with the provisions of Title 3.2 of the Code. Section 3.2-802(C) of the Law directs 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 of invasive plants established pursuant to § 10.1-104.6:2 of the Code.

Purpose

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 is intended to solve.

Section 3.2-802(C) of the Law requires the Board to 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 of invasive plants established pursuant to § 10.1-104.6:2 of the Code. The goal of this regulation is to ensure that property owners are notified that certain plants being proposed or installed on their property have invasive characteristics that may allow the plants to spread and make them difficult to manage.

Promulgation of this regulation would protect the public welfare by alerting homeowners to the invasive characteristics of certain plants and allow them to make an informed decision about installing these plants on their property. There are several commonly used landscape plants that are included on DCR's list and, when not properly managed, can be challenging and costly to control. Such plants may impact the property owner or adjacent properties if the plants escape their containment or respective planting. Invasive plants also have the potential to negatively impact native ecosystems, and property owners may be less inclined to install such plants on their property if they are aware of the plants' invasive characteristics. Notification enables consumers to make an informed decision regarding invasive plants being proposed for installation on their property and assists in protecting consumers' economic welfare.

Substance

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.

Section 3.2-802(C) of the Noxious Weeds Law requires the Board to 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 of invasive plants created by DCR pursuant to § 10.1-104.6:2 of the Code.

The proposed new regulation requires that (i) a tradesperson notify a property owner in writing at the time of a proposal to install an invasive plant species or prior to the installation of an invasive plant species on their property; (ii) specific information be included on the notification; and (iii) a tradesperson maintain documentation of notifications for at least one year from the date a proposal is accepted or from the date of installation. The regulation also establishes definitions for the terms "tradesperson," "notification," and "proposal" to clarify the scope of persons and activities to which the regulation applies.

Issues

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.

VDACS held a stakeholder forum in February 2024 to collect input from industry representatives and other stakeholders on the development of this regulation. During this forum, participants presented various perspectives on the requirement that tradespersons involved with proposing or installing invasive plants provide written notification to property owners. Some stakeholders expressed that tradespersons are in a better position than consumers to know about the invasive characteristics of certain plants, while other stakeholders noted that entities such as landscaping businesses, who would meet the proposed definition of “tradesperson,” may be unaware of the Law and the proposed regulation, may not know about invasive plants, and may not maintain written records of their interactions with their customers. Stakeholders also noted that landscape architects, who meet the proposed definition of “tradesperson,” may not have direct contact with a property owner but may work as a subcontractor, making notification to the property owner difficult.

The proposed regulation will require a person who, for compensation, proposes plants for installation or installs plants to provide notification to landowners when the person proposes or installs invasive plants and to keep records of such notification. The “tradesperson” who is required to provide notification and keep notification records in accordance with this regulation include landscaping designers, landscape architects, landscape companies, contract grounds maintenance crews, and other persons who propose or install plants on property for compensation in Virginia.

The primary advantage of the proposed regulation is that compliance with this regulation will result in consumers receiving information regarding invasive plants being planted on their property. This will increase awareness about invasive plants among the public and potentially reduce the negative impact that could result from the spread of invasive plants.

The primary means by which this regulation will be enforced is through a complaint-based mechanism. VDACS will conduct an inspection of the tradesperson’s records to verify whether notification was given and received. The advantage of this approach to the agency and to the public is that it will not require tradespersons to be registered or routinely inspected by the agency, which saves time and money for both the agency and the public. Only companies that grow or sell nursery stock, which are not “tradespersons” under this proposed regulation, are required to be registered with VDACS currently, so the agency is not able to calculate or estimate how many individuals will need to comply with this proposed regulation. The disadvantage with this approach is that VDACS may not know whether a tradesperson is out of compliance with the regulation and may not have knowledge of all instances of violations of this regulation, making uniform enforcement difficult.

Requirements More Restrictive than Federal

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 applicable federal requirements.

Agencies, Localities, and Other Entities Particularly Affected

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.

Other State Agencies Particularly Affected:

No state agency will be particularly affected by this regulation.

Localities Particularly Affected:

No locality will be particularly affected by this regulation.

Other Entities Particularly Affected:

Entities that meet the proposed definition of “tradesperson,” which will include landscaping professionals, landscape architects, landscape designers, and other persons involved with installing invasive plants for compensation, will be affected by this regulation.

Public Comment

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

Commenter	Comment	Agency response
Rob McGinnis, Virginia Chapter of the American Society of Landscape Architects (ASLA)	ASLA offered the following comments: (1) The term “tradesperson” is not defined in the Code of Virginia and Virginia licensed landscape architects are not classified as a tradesperson, therefore provisions of the regulation should not be applicable to landscape architects; (2) Many landscape designers, horticulturalists, and landscape maintenance specialists may not be members of a professional organizations and may therefore be unaware of the requirements of the regulation, and ASLA requests a waiver of the first violation of the Regulations; and (3) ASLA has	VDACS provided the following response: (1) Section 3.2-109 of the Code of Virginia establishes the Board as a policy board with the authority to adopt regulations in accordance with Title 3.2 of the Code of Virginia. Section 3.2-802(C) of the Noxious Weeds Law (Law) directs 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 of invasive plants established in § 10.1-104.6:2 [of the Code]; (2) VDACS will continue its longstanding practice of working with regulants to achieve voluntary compliance

	concerns regarding enforcement of the Regulations when multiple tradespersons are involved in the installation of plants and questioned the statute of limitations for enforcing the notification requirement.	with provisions of the Law and Regulations; and (3) the Regulations will require that a tradesperson maintain notification records for a period of one year and pursuit of violations will be in accordance with the relevant statute of limitations in the Code of Virginia.
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Detail of Changes Made Since the Previous Stage

*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. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. * Put an asterisk next to any substantive changes.*

Current chapter-section number	New chapter-section number, if applicable	New requirement from previous stage	Updated new requirement since previous stage	Change, intent, rationale, and likely impact of updated requirements
	455-30	The proposed section required tradespersons to retain notifications that were provided to property owners for a period of not less than two years.	This section was amended to require tradespersons to retain notifications that were provided to property owners for a period of not less than one year.	The amendment will reduce the length of time a tradesperson is required to retain certain records. Section 3.2-809 of the Noxious Weeds Law provides that a person who fails to comply with the provisions of the Noxious Weeds Law or regulations adopted pursuant to the Noxious Weeds Law is guilty of a Class 1 misdemeanor. The change to the regulation reduces the length of time a tradesperson is required to retain records to one year, which aligns with the statute of limitations for a Class 1 misdemeanor.

Detail of All Changes Proposed in this Regulatory Action

*List all changes proposed in this action and the rationale for the changes. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. * Put an asterisk next to any substantive changes.*

Current chapter-section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of updated requirements
	455-10	None	The proposed section establishes definitions. The proposed definitions will assist the regulated industry in understanding the regulation. The section lists applicable and relevant definitions. This section defines terms including “notification,” “proposal,” and “tradesperson.”
	455-20	None	<p>The proposed section is intended to establish the required components of the notification that tradespersons are required to provide to property owners.</p> <p>The proposed section establishes written notification requirements for tradespersons. The proposed section establishes who must receive the notification, when a tradesperson must provide the notification, and what must be included in the notification.</p>
	455-30	None	The proposed section establishes a recordkeeping requirement for tradespersons which will assist the agency in determining a tradesperson’s compliance with the notification requirement. The section requires tradespersons to retain notifications that were provided to property owners for a period of not less than one year. Additionally, the tradesperson must make these notifications available to the Commissioner, if requested.