



Virginia
Regulatory
Town Hall

Periodic Review and Notice of Intended Regulatory Action Agency Background Document

Agency Name:	Agriculture and Consumer Services
VAC Chapter Number:	2 VAC 5-320
Regulation Title:	Rules and Regulations for the Enforcement of the Endangered Plant and Insect Species Act
Action Title:	Amend
Date:	July 7, 2000

This information is required pursuant to the Administrative Process Act § 9-6.14:25, Executive Order Twenty-Five (98), and Executive Order Fifty-Eight (99) which outline procedures for periodic review of regulations of agencies within the executive branch. Each existing regulation is to be reviewed at least once every three years and measured against the specific public health, safety, and welfare goals assigned by agencies during the promulgation process.

This form should be used where the agency is planning to amend or repeal an existing regulation and is required to be submitted to the Registrar of Regulations as a Notice of Intended Regulatory Action (NOIRA) pursuant to the Administrative Process Act § 9-6.14:7.1 (B).

Summary

Please provide a brief summary of the regulation. There is no need to state each provision; instead give a general description of the regulation and alert the reader to its subject matter and intent.

This regulation lists, by scientific and common name, plant and insect species that the Board of Agriculture and Consumer Services (Board) has declared to be a threatened or endangered species as defined in the Virginia Endangered Plant and Insect Species Act.

Basis

Please identify the state and/or federal source of legal authority for the regulation. The discussion of this authority should include a description of its scope and the extent to which the authority is mandatory or discretionary. Where applicable, explain where the regulation exceeds the minimum requirements of the state and/or federal mandate.

§ 3.1-1025 of the Code of Virginia (1950), as amended, gives the Board the authority to prescribe and adopt regulations including, but not limited to, the listing of endangered or threatened species, their taking, quotas, seasons, buying, selling, possessing, monitoring or movement, investigating, protecting, or any other need in furtherance of the purposes of the Virginia Endangered Plant and Insect Species Act.

Whether the regulation is mandated by state law or not is not clear. There appears to be a conflict in the authorizing statute. §3.1-1025(A) of the Code of Virginia states that:

“the Board may prescribe and adopt regulations including, but not limited to the listing of endangered or threatened species.....”

However, §3.1-1025(D) states that as a result of investigations by the Commissioner of Agriculture and Consumer Services and recommendations of the Department of Conservation and Recreation:

“...the Board shall approve proposed species to be added to or deleted from the list of endangered species or the list of threatened species, or to be transferred from one list to the other.”

For the purpose of this statement, deference is given to authority contained in §3.1-1025(D) that the regulation is mandated by state law.

Public Comment

Please summarize all public comment received as the result of the Notice of Periodic Review published in the Virginia Register and provide the agency response. Where applicable, describe critical issues or particular areas of concern in the regulation. Also please indicate if an informal advisory group was or will be formed for purposes of assisting in the periodic review or development of a proposal.

The Department published its notice in The Virginia Register of Regulations on April 10, 2000 advertising the opportunity to comment on this regulation pursuant to Executive Order Number Twenty-five (98). An informal advisory group was not formed for the purpose of assisting with this periodic review.

Public comment was provided by the Virginia Department of Conservation and Recreation, Division of Natural Heritage, which recommends eliminating three plant species from the regulation and adding twenty plant species and seven insect species to the regulation.

VDACS has reviewed the recommendations provided by the Department of Conservation and Recreation and agrees that the regulation should be amended. We concur with the recommendation to remove three plant species from the regulation. We believe there is merit in listing sixteen of the recommended plant and insect species as threatened or endangered; however, there is not evidence of sufficient global rarity for the remaining eleven plants and insects to be considered for listing at this time even though the species may be rare in Virginia.

Effectiveness

Please provide a description of the specific and measurable goals of the regulation. Detail the effectiveness of the regulation in achieving such goals and the specific reasons the agency has determined that the regulation is essential to protect the health, safety or welfare of citizens. In addition, please indicate whether the regulation is clearly written and easily understandable by the individuals and entities affected.

Preservation of bio-diversity through the protection of rare, threatened or endangered species is an important function of state government. Preserving bio-diversity and genetic variability, in both wild and domesticated plants, will be vital to the economics and survival of humankind. With the advent of biotechnology, the potential advances and possibilities for the exchange of genetic traits between plants is virtually unlimited. Every time a species is allowed to become extinct, a storehouse of genetic material is lost and can never be replaced.

Listing a species as threatened or endangered under the regulation offers protection to plants that are of aesthetic, ecological, educational, scientific, economic, or other value to the Commonwealth of Virginia. Listing a species provides for the development and implementation of biologically sound and economically feasible protection, recovery, and conservation measures to assure the survival of listed species.

The regulation also offers protection to landowners by protecting listed species on their property from other individuals while not restricting the rights of the private property owner.

The regulation has no impact on the health, safety and welfare of man.

The regulation is clearly written and understood by the individuals and entities affected.

Alternatives

Please describe the specific alternatives for achieving the purpose of the existing regulation that have been considered as a part of the periodic review process. This description should include an explanation of why such alternatives were rejected and this regulation reflects the least burdensome alternative available for achieving the purpose of the regulation.

Due to the mandate for this regulation in accordance with §3.1-1025(D) of the Code of Virginia (1950), as amended, an alternative measure does not exist.

Recommendation

Please state whether the agency is recommending the regulation be amended or terminated and the reasons such a recommendation is being made.

Staff will recommend to the Board that the regulation be amended. The status of three currently listed plants has improved. Since they are no longer considered globally rare, they should be removed from the regulation. In addition, VDACS recommends that ten threatened or endangered plant species and six threatened or endangered insect species be added to the regulation since they are considered rare both globally and in Virginia.

Substance of Proposed Action

Please detail any changes that would be implemented.

The listed ranking of known biological rarity was supplied by the Virginia Department of Conservation and Recreation’s Natural Heritage Division.

Ranking Key: G=Global Population Rarity S=State Population Rarity T=Subspecies
 1=Extremely Rare/Critically Imperiled 2=Very Rare/Imperiled 3=Rare/Uncommon
 4=Common/Apparently Secure 5=Very Common/Demonstrably Secure

The following plant species are recommended for removal from the regulation:

SCIENTIFIC NAME	COMMON NAME	RANKING
Bacopa stragula	Mat-forming Water Hyssop	G5/S2
Buckleya distichophylla	Piratebush	G3/S2
Carex polymorpha	Variable Sedge	G3/S2

The following plant species are recommended for addition to the regulation as endangered:

SCIENTIFIC NAME	COMMON NAME	RANKING
Cardamine micranthera	Small-anthered bittercress	G1/S1

Trifolium calcaricum Running glade clover G1/S1

The following plant species are recommended for addition to the regulation as threatened:

SCIENTIFIC NAME	COMMON NAME	RANKING
Aeschynomene virginica	Sensitive-joint vetch	G2/S2
Echinacea laevigata	Smooth coneflower	G2/S2
Juncus caesariensis	New Jersey Rush	G2/S2
Lycopodiella margueritiae	Northern appressed clubmoss	G2/S1
Nuphar sagittifolia	Narrow-leaved spatterdock	G2/S1
Platanthera leucophaea	Eastern prairie fringed orchid	G2/S1
Rhus michauxii	Michaux's sumac	G2/S2
Scirpus flaccidifolius	Reclining bulrush	G2/S1

The following insect species are recommended for addition to the regulation as endangered:

SCIENTIFIC NAME	COMMON NAME	RANKING
Puto kosztarabi	Buffalo Mountain giant mealybug	G1/S1
Pseudanophtalamus holsingeri	Holsinger's cave beetle	G1/S1
Sigara depressa	Virginia Piedmont water boatman	G1/S1

The following insect species are recommended for addition to the regulation as threatened:

SCIENTIFIC NAME	COMMON NAME	RANKING
Cicindela dorsalis dorsalis	Northeastern beach tiger beetle	G4T2/S2
Neonympha mitchellii	Mitchell's satyr butterfly	G2/S1
Pyrgus wyandot	Appalachian grizzled skipper	G2/S2

Family Impact Statement

Please provide a preliminary analysis of the proposed regulatory action that assesses the potential impact on the institution of the family and family stability including the extent to which the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

Unless otherwise discussed in this report, the amendments to this regulation will have no impact upon families.