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## Periodic Review and Small Business Impact Review Report of Findings

<b>Agency name</b>	Board of Agriculture and Consumer Services
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	2 VAC 5-317
<b>VAC Chapter title(s)</b>	Regulations for Enforcement of the Noxious Weed Law
<b>Date this document prepared</b>	June 24, 2020

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 (1VAC7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

## Acronyms and Definitions

*Define all acronyms used in this Report, 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.

"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 under the Noxious Weeds 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.

## 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 or 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.*

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Section 3.2-109 of the Code of Virginia (Code) establishes the Board of Agriculture and Consumer Services (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 of the Noxious Weeds Law (Va. Code § 3.2-800 et seq.) authorizes the Board to establish regulations under which certain plants can be listed as noxious weeds.

### **Alternatives to Regulation**

*Describe any viable alternatives for achieving the purpose of the regulation that were considered as part of the periodic review. Include an explanation of why such alternatives were rejected and why this regulation is the least burdensome alternative available for achieving its purpose.*

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The agency has determined that no viable alternative exists to achieve the purposes of 2 VAC 5-317, *Regulations for Enforcement of the Noxious Weed Law*. This regulation is the least burdensome alternative to prevent the spread of noxious weeds.

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.

The regulation protects the Commonwealth's agricultural and natural resources from the detrimental impacts of noxious weeds. The intent of the regulation is to slow the spread of noxious weeds established in Virginia and prevent the introduction of those listed species that are not known to occur in the Commonwealth. The regulation establishes a list of noxious weeds, allows for eradication of listed noxious weeds when feasible, and provides restrictions on the movement of listed noxious weeds as well as those articles capable of transporting listed noxious weeds. As the spread of a noxious weed can lead to significant economic losses due to associated eradication and control costs, this regulation assists in protection of the economic welfare of citizens.

The regulation also establishes the Noxious Weed Advisory Committee (Committee), which assists the agency in the evaluation and risk assessment of plant species that may be declared noxious weeds. The Committee uses a science-based assessment process to evaluate plants proposed for listing as a noxious weed.

### **Public Comment**

*Summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and provide the agency response. Be sure to include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. Indicate if an informal advisory group was formed for purposes of assisting in the periodic review.*

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No comments were received during the public comment period that followed the publication of the Notice of Periodic Review on April 27, 2020. An informal advisory group was not formed for the purpose of assisting in this periodic review.

## Effectiveness

*Pursuant to § 2.2-4017 of the Code of Virginia, indicate whether the regulation meets the criteria set out in Executive Order 14 (as amended, July 16, 2018), including why the regulation is (a) necessary for the protection of public health, safety, and welfare, and (b) is clearly written and easily understandable.*

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The regulation is necessary for the protection of public health, safety, and welfare as it provides for the suppression, eradication, and prevention of the spread of noxious weeds in the Commonwealth. The spread of noxious weeds to Virginia's natural and agricultural resources may lead to significant economic loss. The regulation also protects citizens by providing a framework for eradicating those listed noxious weeds that may be hazardous to human health. The regulation is clearly written and easily understandable.

## Decision

*Explain the basis for the promulgating agency's decision (retain the regulation as is without making changes, amend the regulation, or repeal the regulation).*

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The agency recommends that this regulation stay in effect without change. The regulation was recently amended effective July 21, 2020, and requires no further amendments.

## Small Business Impact

*As required by § 2.2-4007.1 E and F of the Code of Virginia, discuss the agency's consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation. Also, discuss why the agency's decision, consistent with applicable law, will minimize the economic impact of regulations on small businesses.*

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The agency has determined that this regulation continues to be necessary to protect the Commonwealth's agricultural and natural resources from the impacts of noxious weeds. The agency has determined that this regulation is not unnecessarily complex and will not have a significant impact on small businesses.

The agency has not received any complaints or comments from the public concerning this regulation. This regulation does not overlap, duplicate, or conflict with federal or state law or regulations. The agency has determined that the recently amended version of this regulation is consistent with current industry practices and that there have been no changes in technology, economic conditions, or other factors that necessitate further amendments.

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