

**Maryland General Assembly
Department of Legislative Services**

**Proposed Regulation
Department of Agriculture
(DLS Control No. 16-202)**

Overview and Legal and Fiscal Impact

This regulation adds plants to existing lists of invasive plants, further specifies the procedure for the classification of invasive plants, and clarifies requirements related to certain invasive plants.

The regulation presents no legal issues of concern.

There is no fiscal impact on State or local agencies.

Regulation of COMAR Affected

Department of Agriculture:

Plant Pest Control: Regulation of Invasive Plants: COMAR 15.06.04.06

Legal Analysis

Background

Chapter 142 of 2011 (codified in §§ 9.5-301 through 9.5-306 of the Agriculture Article) established an Invasive Plants Advisory Committee within the Maryland Department of Agriculture to advise the Secretary of Agriculture in adopting regulations related to invasive plants and report on a science-based risk assessment protocol for invasive plants. Chapter 142 required regulations that establish (1) a list of Tier 1 invasive plants and Tier 2 invasive plants and (2) a procedure for classification or declassification of an invasive plant as a Tier 1 or Tier 2 invasive plant. Under Chapter 142, a “Tier 1 invasive plant” includes invasive plant species that cause or are likely to cause *severe harm* in the State. A “Tier 2 invasive plant” includes invasive plant species that cause or are likely to cause *substantial negative impact* in the State. Regulations to implement Chapter 142 were adopted by the department in 2013.

In general, a person may not propagate, import, transfer, sell, purchase, transport, or introduce any living part of a Tier 1 invasive plant in the State. A person may not (1) sell or offer for sale at a retail outlet a Tier 2 invasive plant unless the retail outlet posts, in a conspicuous manner in proximity to all Tier 2 plant displays, a sign identifying the plants as Tier 2 plants or (2) provide landscaping services to plant or supply for planting a Tier 2 invasive plant unless the person provides to the customer a list of Tier 2 invasive plants.

Summary of Regulation

The regulation (1) adds two plants to the list of Tier 1 invasive plants and two plants to the list of Tier 2 invasive plants; (2) specifies factors that the Secretary must consider when determining whether to classify or declassify a plant as a Tier 1 or Tier 2 invasive plant; and (3) clarifies that a person who provides landscaping services and plants or supplies for planting a Tier 2 invasive plant must provide the customer with a list of Tier 2 invasive plants.

Legal Issues

The regulation presents no legal issues of concern.

Statutory Authority and Legislative Intent

The department cites § 9.5-301 of the Agriculture Article as statutory authority for the regulation. As previously discussed, this section requires the Secretary to adopt regulations that establish a science-based risk assessment protocol for invasive plants that will serve as a basis for creating a two-tiered regulatory approach for controlling invasive plants in the State, and that consider the harm that invasive plants cause in the State. More specifically, this section requires the Secretary to adopt regulations that establish lists of Tier 1 and Tier 2 invasive plants, and a procedure for classification or declassification of Tier 1 or Tier 2 invasive plants.

This authority is correct and complete. The regulation complies with the legislative intent of the law.

Fiscal Analysis

There is no fiscal impact on State or local agencies.

Agency Estimate of Projected Fiscal Impact

The department advises that the regulation has no impact on State or local governments. The Department of Legislative Services concurs.

Impact on Budget

There is no impact on the State operating or capital budget.

Agency Estimate of Projected Small Business Impact

The department advises that the regulation has minimal or no economic impact on small businesses in the State. The Department of Legislative Services concurs.

Contact Information

Legal Analysis: Ryane M. Necessary – (410) 946/(301) 970-5350

Fiscal Analysis: Scott D. Kennedy – (410) 946/(301) 970-5510