

**Maryland General Assembly
Department of Legislative Services**

**Proposed Regulations
Department of Agriculture
(DLS Control No. 15-430)**

Overview and Legal and Fiscal Impact

These regulations implement some of the measures required under Chapter 142 of 2011 to control invasive plants in the State, including the establishment of lists of tier 1 and tier 2 invasive plants based on the science-based risk assessment protocol established under previous regulations.

These regulations present no legal issues of concern.

There is no material fiscal impact on State or local agencies.

Regulations of COMAR Affected

Department of Agriculture:

Plant Pest Control: Regulation of Invasive Plants: COMAR 15.06.04.02, .04, .06, and .07

Legal Analysis

Background

Chapter 142 of 2011 required the Secretary of Agriculture, with the advice of the Invasive Plants Advisory Committee, to adopt specified regulations by October 1, 2012, and others by October 1, 2013, regarding the control of invasive plants in the State. Accordingly, the first set of regulations, which took effect in January 2013, (1) established a science-based risk assessment protocol to serve as the basis for creating a two-tiered regulatory approach for controlling invasive plants; (2) established an approval procedure for activities involving tier 1 invasive plants; and (3) specified the enforcement authority of the Secretary. These regulations constitute the second set of regulations required by Chapter 142.

An “invasive plant” is defined as a terrestrial plant species that did not evolve in the State and, if introduced in the State, will cause or is likely to cause economic, ecological, or environmental harm, or harm to human health. A “tier 1 invasive plant” includes invasive plant species that cause or are likely to cause severe harm within the State. A “tier 2 invasive plant” includes invasive plant species that cause or are likely to cause a substantial negative impact within the State.

Summary of Regulations

These regulations clarify, alter, and add provisions relating to the control of invasive plants in the State. More specifically, the regulations replace existing Regulation .04 with a new regulation that similarly (1) generally prohibits a person from undertaking specified activities involving tier 1 invasive plants; (2) establishes an exception for a person conducting a prohibited activity with prior approval from the Secretary for the purpose of disposing of, controlling, using for research or educational purposes, or exporting a plant out of the State; and (3) establishes procedures for requesting, withdrawing, revoking, or revising the Secretary's approval. However, this regulation contains additional provisions that, under specified conditions, deem a person to have the Secretary's approval and be authorized to engage in an otherwise-prohibited activity for the limited purposes of controlling an invasive plant or transporting a plant for identification or disposal.

Regulation .06, (1) establishes lists of tier 1 and tier 2 invasive plants with an effective date of January 1, 2016; (2) specifies timeframes for compliance with the other provisions of COMAR 15.06.04; and (3) establishes a procedure for requesting the classification or declassification of an invasive plant. This regulation also prohibits the acquisition of a tier 1 plant after the plant is included on the list. The Secretary must send a list of tier 2 invasive plants to licensed nurseries, plant dealers, and plant brokers with the annual license renewal letters and with each new application for a license. In addition, a person who removes a tier 1 plant off-site must ensure that the plant is completely contained and, if removed for disposal, buried or composted at a landfill or compost facility approved by the Maryland Department of the Environment.

Regulation .07 requires a retail seller to post a specified warning sign in a conspicuous place in proximity to all tier 2 invasive plant displays.

Legal Issues

The regulations present 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 regulations. More specifically, § 9.5-301(1)(iii) requires the Secretary, by October 1, 2012, and with the advice of the Invasive Plants Advisory Committee, to adopt regulations that establish a procedure for the approval of specified activities involving tier 1 invasive plants. Section 9.5-301(2) requires the Secretary, by October 1, 2013, and with the advice of the Invasive Plants Advisory Committee, to adopt regulations that (1) establish a list of tier 1 and tier 2 invasive plants in accordance with the risk assessment protocol; (2) establish a procedure for classification or declassification of an invasive plant; (3) phase in the implementation of the requirements giving consideration to the economic impact on specified industries; (4) establish a procedure for the disposal of tier 1 plants; (5) designate the format, size, and content of the sign a retail seller must post in proximity to all tier 2 plant displays; and (6) provide for the distribution

of a list of tier 2 invasive plants to licensed nurseries, plant dealers, and plant brokers on an annual basis.

This authority is correct and complete. The regulations comply with the legislative intent of the law.

Fiscal Analysis

There is no material fiscal impact on State or local agencies.

Agency Estimate of Projected Fiscal Impact

The department advises that the regulations have no material impact on State or local governments. The Department of Legislative Services concurs. The regulations implement Chapter 142 of 2011 (House Bill 831). The fiscal and policy note for House Bill 831 indicated that implementation of the bill was expected to be handled by the department with existing resources. These regulations should not have any independent impact.

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 regulations may have a meaningful economic impact on small businesses in the State due to their potential impact on plant nurseries, dealers, and landscapers. The Department of Legislative Services disagrees, only because those small business impacts have already been accounted for in the fiscal and policy note for House Bill 831 of 2011. These regulations should not have any additional impact.

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