

MARYLAND REGISTER

Proposed Action on Regulations

Transmittal Sheet PROPOSED OR REPROPOSED Actions on Regulations	Date Filed with AELR Committee	TO BE COMPLETED BY DSD
	12/14/2015	Date Filed with Division of State Documents
		Document Number
		Date of Publication in MD Register

1. Desired date of publication in Maryland Register: 1/22/2016

2. COMAR Codification

Title Subtitle Chapter Regulation

15 06 04 02, .04, .06, .07

3. Name of Promulgating Authority

Department of Agriculture

4. Name of Regulations Coordinator

Iva Benson

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410-841-5829

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50 Harry S. Truman Parkway, Suite 303

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5. Name of Person to Call About this Document

Carol Holko

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6. Check applicable items:

New Regulations

Amendments to Existing Regulations

Date when existing text was downloaded from COMAR online: December 14, 2015.

Repeal of Existing Regulations

Recodification

Incorporation by Reference of Documents Requiring DSD Approval

Reproposal of Substantively Different Text:

40: 1 Md. R 21 2013
(vol.) (issue) (page nos) (date)

Under Maryland Register docket no.: --P.

7. Is there emergency text which is identical to this proposal:

Yes No

8. Incorporation by Reference

Check if applicable: Incorporation by Reference (IBR) approval form(s) attached and 18 copies of documents proposed for incorporation submitted to DSD. (Submit 18 paper copies of IBR document to DSD and one copy to AELR.)

9. Public Body - Open Meeting

OPTIONAL - If promulgating authority is a public body, check to include a sentence in the Notice of Proposed Action that proposed action was considered at an open meeting held pursuant to State Government Article, §10-506(c), Annotated Code of Maryland.

OPTIONAL - If promulgating authority is a public body, check to include a paragraph that final action will be considered at an open meeting.

10. Children's Environmental Health and Protection

Check if the system should send a copy of the proposal to the Children's Environmental Health and Protection Advisory Council.

11. Certificate of Authorized Officer

I certify that the attached document is in compliance with the Administrative Procedure Act. I also certify that the attached text has been approved for legality by Craig Nielsen, Assistant Attorney General, (telephone #410-841-5883) on December 14, 2015. A written copy of the approval is on file at this agency.

Name of Authorized Officer

Joseph Bartenfelder

Title

Secretary

Telephone No.

410-841-5884

Date

December 14, 2015

Title 15
DEPARTMENT OF AGRICULTURE
Subtitle 06 PLANT PEST CONTROL

15.06.04 Regulation of Invasive Plants

Authority: Agriculture Article, Section 9.5-301, Annotated Code of Maryland

Notice of Proposed Action

[]

The Secretary of Agriculture proposes to repeal Regulation .04; amend Regulation .02; and propose new Regulations .04, .06 & .07 under COMAR 15.06.04 Regulation of Invasive Plants.

Statement of Purpose

The purpose of this action is to establish a list of tier 1 plants and tier 2 plants in accordance with the Department's risk assessment protocol; establish a procedure for the classification or the declassification of an invasive plant as a tier 1 invasive plant or a tier 2 invasive plant, phase in the implementation of the requirements of this chapter; establish a procedure for the disposal of tier 1 plants; designate signage requirements; and provide for the distribution of a list of tier 2 invasive plants to licensed nurseries, plant dealers, and plant brokers on an annual basis.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

I. Summary of Economic Impact.

The cost of signage and delivery of tier 2 plant list required by this chapter could be meaningful depending on the number of tier 2 plants in the possession of regulated industries.

II. Types of Economic Impact.	Revenue (R+/R-)	Expenditure (E+/E-)	Magnitude
A. On issuing agency:	(E-)		Unknown
B. On other State agencies:	NONE		
C. On local governments:	NONE		
	Benefit (+)		Magnitude
	Cost (-)		

D. On regulated industries or trade groups:	(-)	Unknown
E. On other industries or trade groups:	NONE	
F. Direct and indirect effects on public:	(+)	Unknown

III. Assumptions. (Identified by Impact Letter and Number from Section II.)

A. MDA will enforce with existing resources. Some outreach materials will need to be developed initially. We will count on Web delivery, outreach with industry groups, and inclusions with annual re-registration and other routine mailings.

D. Plant nurseries, dealers, and landscapers could be impacted:

- Required signage for Tier 2 plants will have an associated cost. For example, a yellow corrugated sign is priced at approximately \$10 (quote 7/17/2015 from Signs by Tomorrow). If a retail location was to sell all five Tier 2 species and put them in different places, they would need ~\$50 worth of signs. They may be able to print them on site using their own printing equipment.
- Yellow flag iris is the only proposed Tier 1 plant that we are aware of that is potentially in the trade and it could no longer be sold in state, or out of state without approval from the Secretary. It is unclear the scope of existing supplies of yellow flag iris in Maryland aquatic nurseries.
- Landscapers will need to provide their customers with lists of Tier 2 plants that they plan to use.

F. While there may be some initial confusion regarding impacts of these regulations on the public, in reality they will be educated as to how to remove invasive plants with a reduced risk of further spreading them.

Economic Impact on Small Businesses

The proposed action has a meaningful economic impact on small business. An analysis of this economic impact follows.

Most Maryland nurseries are small businesses. See D. II.

Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to Carol Holko, Assistant Secretary, Maryland Department of Agriculture, 50 Harry Truman Parkway, Annapolis, Maryland 21401, or call (410) 841-5870, or email to carol.holko@maryland.gov, or fax to (410) 841-5835. Comments will be accepted through February 22, 2016. A public hearing has not been scheduled.

Economic Impact Statement Part C

- A. Fiscal Year in which regulations will become effective: FY 2016
- B. Does the budget for the fiscal year in which regulations become effective contain funds to implement the regulations?
Yes
- C. If 'yes', state whether general, special (exact name), or federal funds will be used:
General funds.
- D. If 'no', identify the source(s) of funds necessary for implementation of these regulations:
- E. If these regulations have no economic impact under Part A, indicate reason briefly:
- F. If these regulations have minimal or no economic impact on small businesses under Part B, indicate the reason and attach small business worksheet.
- G. Small Business Worksheet:

Attached Document:

Title 15 DEPARTMENT OF AGRICULTURE

Subtitle 06 PLANT PEST CONTROL

15.06.04 Regulation of Invasive Plants

Authority: Agriculture Article, §9.5-301, Annotated Code of Maryland

.01 Scope.

(text unchanged)

.02 Definitions.

A. –B. (text unchanged)

(1) “Commercial entity” means an entity that engages in a plant removal activity for profit.

[1] (2) (text unchanged)

(3) “Off-site” means property other than where the Tier 1 invasive plant exists, including property under the control of the person removing the Tier 1 plant but not contiguous, e.g. separated by a road or property owned by another person.

[2] (4) (text unchanged)

[3] (5) (text unchanged)

(6) “Transport” means when a person moves a Tier 1 invasive plant anywhere within the State, including for transportation or shipment.

.03 Risk Assessment Protocol for Invasive Plants.

(text unchanged)

[04. Tier 1 Approval Process.] (proposed for repeal)

.04 Tier 1 Prohibitions and Approvals.

A. Except as approved by the Secretary under this regulation, a person may not propagate, import, transfer, sell, purchase, transport, or introduce any living part of a Tier 1 invasive plant in the State.

- B. A person may conduct an activity prohibited under section A of this regulation if:
- (1) The person receives approval from the Secretary before conducting the activity; and
 - (2) The activity is for the purpose of:
 - (a) Disposing of the invasive plant;
 - (b) Controlling the invasive plant;
 - (c) Using the invasive plant for research or educational purposes; or
 - (d) Exporting the invasive plant out of the State
- C. A person has the Secretary's approval and may engage in any activity prohibited by Section A of this regulation for the limited purpose of:
- (1) Controlling a Tier 1 invasive plant, provided:
 - (a) The person is not a commercial entity;
 - (b) The plant is not taken off-site; and
 - (c) The plant is not placed at a location in the proximate vicinity of a roadway or waterway that could facilitate the movement of the invasive plant off-site, or
 - (2) Transporting a Tier 1 invasive plant off-site for the purpose of identification or disposal, provided:
 - (a) The person is not a commercial entity; and
 - (b) The plant is removed according to the provisions of regulation .06 E.
- D. For approvals not granted under section C of this regulation, a person may submit a written request to the Secretary for approval of any activity allowed under section B of this regulation with the following information:
- (1) Name;
 - (2) Business, nursery or plant dealer license # if applicable;
 - (3) Phone;
 - (4) Email;
 - (5) Tier 1 plant for which approval is being requested, full botanical name;
 - (6) Specific location of the Tier 1 plant;
 - (7) Proposed activity;
 - (8) Method of safeguarding from propagule dispersal;
 - (9) Time-frame of the proposed activity; and
 - (10) Any other information required by the Secretary.
- E. Upon notice and an opportunity to be heard the Secretary may:
- (1) Withdraw or revoke any approval for any person who violates any condition of any approval by the Secretary; or
 - (2) Revise any approval as a condition of any permit, based on new information obtained after an approval is granted.

.05 Administrative Orders By The Secretary.

(text unchanged)

.06 Tier 1 and Tier 2 Invasive Plants.

- A. The following plants are classified as Tier 1 invasive plants upon adoption of this list as provided on the following effective dates:
- (1) *Ficaria verna* (fig buttercup) (effective date January 1, 2016);
Geranium lucidum (shining cranesbill) (effective date January 1, 2016); and
Iris pseudacorus (yellow flag iris) (effective date January 1, 2016)
 - (2) Phase-out periods for Tier 1 plants are as follows:
 - (a) A person in possession of a Tier 1 plant, except a person who is growing a woody plant in ground, shall comply with the Tier 1 provisions of this chapter within one year of that plant's effective date on the Tier 1 list.
 - (b) A person who is growing a Tier 1 woody plant in ground shall comply with the provisions of this chapter within two years from that plant's effective date on the Tier 1 list.
 - (c) A person may not acquire a new Tier 1 plant after that plant's effective date on the Tier 1 list.
- B. The following plants are classified as Tier 2 invasive plants upon adoption of this list as provided on the following effective dates.
- (1) *Euonymus alatus* (burning bush) (effective date January 1, 2016);
Ligustrum obtusifolium (blunt-leaved or border privet) (effective date January 1, 2016);
Wisteria sinensis (Chinese wisteria) (effective date January 1, 2016);
Wisteria floribunda (Japanese wisteria) (effective date January 1, 2016); and
Wisteria x formosa (floribunda x sinensis hybrids) (effective date January 1, 2016)
 - (2) A person shall comply with the Tier 2 provisions of this chapter within three months of a plant's effective date on the Tier 2 list.
- C. Procedures for classification or declassification of an invasive plant as a Tier 1 invasive plant or Tier 2 invasive plant.

A person who requests the classification or declassification of a plant as a Tier 1 or Tier 2 invasive plant, shall submit a written request to the Secretary that includes the name of the requestor, contact information, scientific name of the plant, and a justification for the request.

D. Distribution of the list of Tier 2 invasive plants by the Department to licensed nurseries, plant dealers, and plant brokers on an annual basis.

(1) The Secretary shall send a list of Tier 2 invasive plants with annual renewal letters and with each new application for a nursery, plant dealer, or plant broker license.

(2) The Secretary shall post the current list of Tier 2 invasive plants on the Department's website.

E. Disposal of Tier 1 plants.

Any person who removes a Tier 1 plant off-site shall ensure that:

(1) The plant is completely contained (e.g. covered or securely tarped in a solid conveyance, or bagged) to prevent the escape of plant parts into the environment; and

(2) If the plant is being removed for disposal, it is removed to a Maryland Department of Environment approved landfill or compost facility for burial or composting.

.07 Required Retail Signage for Tier 2 Plants

A person shall post in a conspicuous place, in proximity to all Tier 2 invasive plant displays, a sign imprinted with the insignia required by this regulation, identifying the plants as Tier 2 invasive plants, consistent with the following:

A. The insignia imprinted on any sign shall be a minimum of 5" tall x 7" wide;

B. The insignia shall be reproduced in black on a bright yellow background; and

C. The insignia as provided below shall be used:



JOSEPH BARTENFELDER
Secretary of Agriculture