

**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

**Notice of Proposed Action**

[16-059-P]

The Secretary of Agriculture proposes to amend Regulation **.02**, repeal existing Regulation **.04**, and adopt new Regulations **.04**, **.06**, and **.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 the 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.

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

### **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](mailto:carol.holko@maryland.gov), or fax to (410) 841-5835. Comments will be accepted through March 7, 2016. A public hearing has not been scheduled.

#### **.02 Definitions.**

A. (text unchanged)

B. Terms Defined.

(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, for example, separated by a road or property owned by another person.

[(2)] (4) — [(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.

#### **.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 §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 § 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 .06G of this chapter.

D. For approvals not granted under §C of this regulation, a person may submit a written request to the Secretary for approval of any activity allowed under §B of this regulation with the following information:

- (1) Name;
- (2) Business, nursery, or plant dealer license number if applicable;
- (3) Phone;
- (4) Email address;
- (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.

#### **.06 Tier 1 and Tier 2 Invasive Plants.**

A. The following plants are classified as Tier 1 invasive plants upon adoption of this regulation (see Department’s website for adoption date <http://mda.maryland.gov/Pages/Proposed-Regulations.aspx>):

- (1) *Ficaria verna* (fig buttercup);
- (2) *Geranium lucidum* (shining cranesbill); and
- (3) *Iris pseudacorus* (yellow flag iris).

B. Phase-out periods for Tier 1 Plants.

- (1) 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 1 year of that plant’s effective date on the Tier 1 list.
- (2) A person who is growing a Tier 1 woody plant in ground shall comply with the provisions of this chapter within 2 years from that plant’s effective date on the Tier 1 list.
- (3) A person may not acquire a new Tier 1 plant after that plant’s effective date on the Tier 1 list.

C. The following plants are classified as Tier 2 invasive plants upon adoption of this regulation (see Department’s website for adoption date <http://mda.maryland.gov/Pages/Proposed-Regulations.aspx>):

- (1) *Euonymus alatus* (burning bush);
- (2) *Ligustrum obtusifolium* (blunt-leaved or border privet);
- (3) *Wisteria sinensis* (Chinese wisteria);
- (4) *Wisteria floribunda* (Japanese wisteria); and

(5) *Wisteriua x yormosa* (*floribunda x sinensis* hybrids).

D. A person shall comply with the Tier 2 provisions of this chapter within 3 months of a plant's effective date on the Tier 2 list.

E. *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, the scientific name of the plant, and a justification for the request.

F. *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.

G. *Disposal of Tier 1 Plants.* Any person who removes a Tier 1 plant off-site shall ensure that:

(1) The plant is completely contained (for example, 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