

**DEPARTMENT OF AGRICULTURE
PLANT INDUSTRIES SECTION**

Statutory Authority: 3 Delaware Code, Section 2904(a) (3 **Del.C.** §2904(a))

FINAL

ORDER

806 Regulations for Invasive Plants

This Order relates to the proposed Regulations for Invasive Plants ("Regulations"). The Delaware Department of Agriculture, Plant Industries Section ("Department") proposed the Regulations to clearly define the procedures, plant list maintenance, and governing measures related to the Invasive Plant Law.

In accordance with the state public notice requirements of Title 29, Chapter 101 of the Delaware Code, the Department provided public notice and provided an open comment period for thirty (30) days to allow all stakeholders an opportunity to provide input on the proposed regulation. The Department did receive comments from the public.

The proposed Regulations were first published in the *Delaware Register of Regulations*, Volume 25, Issue 11, on May 1, 2022. After receiving comments from the public, the Department made substantive changes to the regulations which was re-proposed in the July 1, 2022 *Delaware Register of Regulations*. Pursuant to 29 **Del.C.** §10118(a), the date to receive final written comments was August 1, 2022.

Summary of the Evidence and Information Submitted

There was no public hearing held and a total of eight written comments were received by the Department. Comments were generally very similar supporting changes made in the re-proposed regulations including moving a plant to the Plant Watch List, creating a process to exempt and maintain plants on the lists, and allowing more general signage for the Plant Watch List.

Findings of Fact and Conclusions

The public was given notice and an opportunity to provide the Department with comments in writing on the proposed amendments to the Regulations. After reviewing the written comments received from the public, the Department will not make any changes to the proposed amendments to the Regulations. In the proposed amendments to the Regulations, the Department addresses several of the comments submitted by the public, by detailing the petition process to exempt specific cultivars of species listed on the Invasive Plant List.

Pursuant to 3 **Del.C.** §101 (2) & (3), the Department has the statutory authority to promulgate rules and regulations.

Decision and Effective Date

The Department hereby adopts the Regulations as proposed, to be effective 10 days following publication of this Order in the *Delaware Register of Regulations*. The new Regulations are attached hereto as Exhibit A.

IT IS SO ORDERED this 15th day of August 2022.

Michael T. Scuse
Delaware Secretary of Agriculture

806 Regulations for Invasive Plants

1.0 Purpose

- 1.1 The purpose of these regulations is to clarify how the Department will eradicate, repress, and prevent the spread of plant pests as authorized in Title 3, Chapter 11 of the Delaware Code.
- 1.2 The Department will work with the Delaware Native Species Commission for expertise and advice on maintaining the Invasive Plant List and Plant Watch list and review of sterility exemption.
- 1.3 The Department will be responsible for enforcement of the Invasive Plant Law during routine inspections of businesses or inspections resulting from a complaint. During inspections, the Department will survey for plants on the Invasive Plant List and ensure businesses' compliance with signage requirements for plants on the Plant Watch List.

2.0 Definitions

The following words and terms, when used in this regulation, have the following meaning:

"Commission" means the Delaware Native Species Commission.

"Cultivar" means a plant variety that has been produced in cultivation by selective breeding.

"Department" means the Delaware Department of Agriculture.

"Invasive plant" means any living part, cultivar, variety, species or subspecies not native to Delaware identified by the Secretary having the potential to do all of the following:

- a. Result in widespread dispersal and establishment.
- b. Out-compete other species in the same area.
- c. Exhibit rapid growth or high seed or propagule productions.
- d. Become established in natural areas in the State.

"Invasive Plant List" means the list of invasive plants maintained by the Secretary.

"Plant Watch List" means the list of potentially invasive plants maintained by the Secretary.

"Secretary" means the Secretary of the Delaware Department of Agriculture.

"Sterility" means unable to produce reproductive structures.

3.0 The Invasive Plant List and Plant Watch List

3.1 The Invasive Plant List

- 3.1.1 Amur honeysuckle, *Lonicera maackii*
- 3.1.2 Autumn olive, *Elaeagnus umbellata*
- 3.1.3 Callery pear, *Pyrus calleryana*
- 3.1.4 Chinese wisteria, *Wisteria sinensis*
- 3.1.5 Creeping water primrose, *Ludwigia peploides subsp. glabrescens*
- 3.1.6 English ivy, *Hedera helix*
- 3.1.7 European privet, *Ligustrum vulgare*
- 3.1.8 European reed, *Phragmites australis subsp. australis*
- 3.1.9 European sweetflag, *Acorus calamus*
- 3.1.10 Garlic mustard, *Alliaria petiolata*
- 3.1.11 Hydrilla, *Hydrilla verticillata*
- 3.1.12 Japanese barberry, *Berberis thunbergii*
- 3.1.13 Japanese honeysuckle, *Lonicera japonica*
- 3.1.14 Japanese knotweed, *Fallopia japonica*
- 3.1.15 Japanese pachysandra, *Pachysandra terminalis*
- 3.1.16 Japanese stiltgrass, *Microstegium vimineum*
- 3.1.17 Lesser celandine, *Ficaria verna*
- 3.1.18 Lesser periwinkle, *Vinca minor*
- 3.1.19 Marsh dewflower, *Murdannia keisak*
- 3.1.20 Mile-a-minute weed, *Persicaria perfoliata*
- 3.1.21 Morrow's honeysuckle, *Lonicera morrowii*
- 3.1.22 Multiflora rose, *Rosa multiflora*
- 3.1.23 Norway maple, *Acer platanoides*
- 3.1.24 Orange daylily, *Hemerocallis fulva*
- 3.1.25 Oriental bittersweet, *Celastrus orbiculatus*
- 3.1.26 Parrot-feather, *Myriophyllum aquaticum*
- 3.1.27 Porcelain berry, *Ampelopsis glandulosa*
- 3.1.28 Purple loosestrife, *Lythrum salicaria*
- 3.1.29 Spotted knapweed, *Centaurea stoebe subsp. micranthos*
- 3.1.30 Tatarian honeysuckle, *Lonicera tatarica*
- 3.1.31 Tree of heaven, *Ailanthus altissima*
- 3.1.32 Water hyacinth, *Eichhornia crassipes*

- 3.1.33 Wineberry, *Rubus phoenicolasius*
- 3.1.34 Winged euonymus, *Euonymus alatus*
- 3.1.35 Yam-leaved clematis, *Clematis terniflora*
- 3.1.36 Yellow flag iris, *Iris pseudoacorus*

3.2 The Plant Watch List. Plants listed on the Plant Watch List must be identified with a tag, label, or sign on each plant or in the general vicinity of the plants for sale.

3.2.1 Creeping Jenny, *Lysimachia nummularia*

4.0 Maintenance of the Invasive Plant List and Plant Watch List

4.1 The Secretary shall maintain the Invasive Plant List and Plant Watch List with the advice of the Commission, so long as the Commission exists.

4.1.1 Should the Department receive requests for review of plants to be added or removed from the Invasive Plant List or Plant Watch List, the Department shall submit requests to the Commission for advice, within 30 days of the request for review.

4.1.2 The Department and the Commission shall review any plants recommended to be added to or removed from the Invasive Plant List and Plant Watch List. The Department shall seek the advice of the Commission, or any subcommittee as designated by the Commission, to add or remove plants from the Invasive Plant List or Plant Watch List.

4.1.3 Should the Commission receive requests for review of plants to add or remove from the Invasive Plant List or Plant Watch List, the Commission shall provide its recommendations via email to the Secretary or during a Commission meeting within 60 days of the initial request for review. Recommendations must include, at a minimum, a detailed methodology used by the Commission to make a determination about each plant under consideration to be added to or removed from the Invasive Plant List and Plant Watch List.

4.1.4 The Secretary shall respond to the Commission with a decision or a request for additional information within 60 days of the date of the recommendation.

4.1.5 The Secretary shall initiate any required regulatory changes to the Invasive Plant List and Plant Watch List within 30 days of the date that a determination has been made.

5.0 Allowance for Sterility

5.1 The Department recognizes that the level of sterility of a plant impacts its potential to:

5.1.1 Result in widespread dispersal and establishment.

5.1.2 Out-compete other species in the same area.

5.1.3 Exhibit rapid growth or high seed propagule productions.

5.1.4 Become established in natural areas in the State.

5.2 The Department reserves the right to consider cultivars of plants based on level of sterility at their point of sale or delivery into the State of Delaware. The Department may grant an exemption for cultivars of plants listed on the Invasive Plant List.

5.3 Persons requesting that a cultivar be exempted from the Invasive Plant List must petition the Department by submitting a Petition to Exempt a Specific Cultivar form. Persons may request that plant cultivars be exempted from the Invasive Plant List based on sterility level and seed viability and must provide an explanation and references to justify the request.

5.4 The Department, with advice of the Commission, will consider submitted cultivars for exemption when there is independent, peer reviewed, scientific research evaluating the invasiveness of the cultivar. Petitions require burden of proof to be held by the breeder or plant representative and leave no responsibility to the State of Delaware.

5.4.1 Any requests brought to the Department for a cultivar to be exempted from the Invasive Plant List shall be submitted to the Commission via email within 30 days of the request for advice.

5.4.2 The Commission shall provide recommendations via email to the Secretary within 60 days of receiving the Petition to Exempt a Specific Cultivar form. The recommendations must include, at a minimum, a detailed methodology used by the Commission to make a determination about each cultivar under consideration to be exempted from the Invasive Plant List.

5.4.3 The Secretary shall respond to the Commission with a decision or a request for additional information via email within 60 days of the date of the recommendations.

5.4.4 The Secretary shall initiate any required regulatory changes to the Invasive Plant List within 30 days of the date that a determination has been made, with the advice of the Commission, to exempt a cultivar from the Invasive Plant List.

5.5 Exemptions are conditional and subject to revocation by the Department.

26 DE Reg. 171 (09/01/22) (Final)