

Title 08 DEPARTMENT OF NATURAL RESOURCES

Subtitle 07 FORESTS AND PARKS

Chapter 02 Roadside Tree Care

Authority: Natural Resources Article, §§5-209 and 5-406, Annotated Code of Maryland

08.07.02.01

.01 Purpose.

The purpose of these regulations is to implement Natural Resources Article, §§5-401—5-406, Annotated Code of Maryland, to ensure the proper care of roadside trees in the interest of promoting and maintaining healthy trees and safe, unobstructed, and aesthetically pleasing public roads and rights-of-way.

08.07.02.02

.02 Definitions.

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

(1) "Director" means the Director of the Maryland Forest Service, a unit of the Department of Natural Resources, or the Director's authorized representative.

(2) "Dripline" is a line extending from the outer reaches of a tree crown vertically to the ground.

(3) "Forest Service" means the Maryland Forest Service.

(4) "Licensed tree expert" means a person licensed under Natural Resources Article, §5-415 et seq., Annotated Code of Maryland.

(5) "Person" includes the State, a county, municipal corporation, or other political subdivision of the State, or their units, or an individual, receiver, trustee, guardian, executor, administrator, fiduciary, or representative of any kind, or a partnership, firm, association, public or private corporation, or other entity.

(6) "Pesticide" means a:

(a) Chemical or biological preparation used to kill, inhibit, or regulate growth on targeted plants, their spores or seed, including:

(i) Herbicides,

(ii) Insecticides,

(iii) Tree growth regulators, and

(iv) Fungicides;

(b) Substance or mixture of substances intended for:

(i) Preventing, destroying, repelling, or mitigating pests,

(ii) Use as a plant regulator, defoliant, or desiccant, or

(iii) Use as a spray adjuvant such as a wetting agent or adhesive.

(7) "Public road" means a road the title to which, or the easement for the use of which, is vested in a public body or governmental agency.

(8) "Recommended tree list" means a list of trees approved by the Forest Service and those recommended by the Forest Service that are suitable for planting on specific sites and for specific conditions within the right-of-way of a public road.

(9) "Right-of-way of a public road" means that land the title to which, or an easement for which, is held by the State, county, or a municipality for use as a public road.

(10) "Roadside tree" or "tree" means a plant that has a woody stem or trunk that grows all, or in part, within the right-of-way of a public road.

(11) "Roadside tree care expert" means an individual representing a governmental agency who:

(a) Is designated to supervise that government's roadside tree planting and maintenance operations;

(b) Has passed the Forest Service's examination for Roadside Tree Care Experts; and

(c) Has been approved by the Forest Service as qualified to supervise that government's tree care program.

(12) "Tree care" means:

(a) Removal of a roadside tree;

(b) Planting or maintenance, or both, of a roadside tree;

(c) Application of pesticide to a roadside tree; or

(d) Treatment that may affect the health or growth of a roadside tree.

(13) "Tree care crew" means a unit from a public or private entity whose purpose is to maintain roadside trees as defined in §B(10) of this regulation, characterized by a service truck and supervised by a licensed tree expert.

(14) "Tree care standards" means tree care approved by the Forest Service and in accordance with the roadside tree care standards set forth in Regulations .07—.09 of this chapter.

08.07.02.02-1

.02-1 Incorporation by Reference.

A. In this chapter, the following document is incorporated by reference.

B. Document Incorporated. American Standard for Nursery Stock, ANSI Z60.1-2004, (American Nursery & Landscape Association, May 12, 2004).

08.07.02.03

.03 Permit Required.

A. A person may cut down or prune a roadside tree without a permit if the tree:

- (1) Is uprooted or its branches are broken to contact telephone, telegraph, electric power, or other wires carrying electricity, or if the tree or its branches are an immediate danger to person or property; or
- (2) Stands within the right-of-way of a public road which has not been surfaced with either stone, shell, gravel, concrete, brick, asphalt, or other improved surface material, and only if the tree is cut down and removed by, or at the request of, the abutting landowner for the landowner's own use.

B. Except as provided in §A of this regulation, a person shall obtain a permit to perform tree care to a roadside tree.

C. A person providing tree care under §A(1) of this regulation shall inform the Forest Service, by calling or writing within 1 week of the action taken, of the place or general area where that action was taken, and provide a proposed plan to upgrade the work, if necessary, to tree care standards. The Forest Service shall approve, modify, or reject a proposed plan within 2 weeks after an examination of the work.

08.07.02.04

.04 Types of Roadside Tree Care Permits.

A. Roadside tree care permits are of two types:

- (1) Permits issued for a specific tree or group of trees for specific tree care operations for a term not exceeding 1 year from the date of issuance; and
- (2) Permits issued for comprehensive and continuing programs of general tree care such as those administered by State agencies, counties, municipalities, corporations, and public utilities.

B. Permits issued under §A(2) of this regulation are issued only for specified types of tree care, based upon the skills of those supervising the program.

C. For tree care not authorized in a permit issued under §A(2) of this regulation, a permittee shall obtain a separate tree care permit.

D. Permits are issued for a calendar year, and may be renewed upon application.

08.07.02.05

.05 Issuance of Roadside Tree Care Permits.

A. A request for a roadside tree care permit:

- (1) May be made by:

- (a) A person owning title to the land on which the tree or trees are located,
 - (b) A governmental entity possessing an easement for the public road right-of-way in which the tree or trees are located,
 - (c) A person responsible for providing tree care to the tree or trees,
 - (d) A person whose property abuts the right-of-way at the point at which the tree or trees are located,
 - (e) A public utility, or
 - (f) An authorized agent of one of the entities in §A(1)(a)—(e) of this regulation; and
- (2) Shall be made by an applicant to the appropriate office of the Forest Service.

B. For permits authorizing continued tree care programs under Regulation .04A(2) of this chapter, an examination is necessary only as specified in the permit. An examination is not required for the renewal of the permit.

C. The Forest Service may issue a permit for tree care if the applicant shows that the proposed tree care will meet one of the following conditions:

- (1) Eliminate a hazard to property, public safety, or health;
- (2) Improve or prevent a deteriorated tree condition; or
- (3) Improve the general aesthetic appearance of the right-of-way.

D. Unless exempted by the Forest Service, if a tree is removed it shall be followed by replanting of a species on the recommended tree list that is suitable to the location.

E. Roadside tree care permits shall specify:

- (1) The name and address of the permittee;
- (2) The area where the tree care will occur;
- (3) The particular tree or trees involved;
- (4) The type of tree care permitted;
- (5) The term of the permit;
- (6) Whether supervision of the tree care is required; and
- (7) Limitations or conditions on the tree care or planting considered advisable by the Forest Service.

F. If the Forest Service denies a permit, the Forest Service shall notify the applicant of the reasons for denial within 10 days of receipt of the application for the permit.

G. The Forest Service may:

(1) Modify the terms and conditions of a permit in accordance with provisions and objectives of the roadside tree care laws and regulations; or

(2) Suspend or cancel a permit for a violation of a:

(a) Condition of the permit, or

(b) Provision of Natural Resources Article, §5-401 et seq., Annotated Code of Maryland, or implementing regulation.

H. Request for Hearing.

(1) A person whose request for a roadside tree care permit is denied, or whose roadside tree care permit is suspended or revoked, has the right to be heard regarding the denial or suspension or revocation of the permit, after submitting a request in writing not later than 10 days after the date on which the denial or suspension or revocation notice is served.

(2) The Director shall schedule a hearing within 10 days from receipt of a request and render a decision within 10 days from the date of the hearing.

08.07.02.06

.06 Fees.

A. Fees for roadside tree care permits are calculated according to the following schedule:

(1) If Forest Service supervision of the proposed tree care is required for a permit under Regulation .04A(2) of this chapter, the fee for issuing the permit, and for supervising work authorized by the permit, is:

(a) \$2,500 per year per tree care crew, or

(b) \$250 per month per tree care crew;

(2) The fee for issuing the permit and for supervising work authorized by the permit under Regulation .04A(1) of this chapter is \$25; and

(3) A fee is not required for a tree care permit issued to an applicant that is a government agency.

B. If a permit request is denied, a fee is not required.

C. Billing for tree care crews is made either annually or quarterly, at the option of the tree care crew.

08.07.02.07

.07 Roadside Tree Care Standards.

A. General Requirements. Unless the Forest Service grants an exception, treatment of roadside trees authorized by permit shall be performed according to the following standards:

(1) Branches to be removed shall be cut back to a live lateral branch at least 1/3 the diameter of the severed branch;

- (2) Cuts shall be made sufficiently close to the trunk or parent limb without cutting into the branch collar or leaving a protruding stub;
- (3) Proper pruning techniques shall be followed at all times;
- (4) Except when directed by the Forest Service, pruning cuts shall be left unpainted for aesthetic reasons;
- (5) If the painting of cuts is required, only materials nontoxic to the cambial layer shall be used;
- (6) Dangerous deadwood and broken limbs which are located within the scope of the work as defined in the permit shall be removed;
- (7) Except when authorized by the Forest Service or when the tree is being removed, climbing hooks or spurs are prohibited;
- (8) Chips resulting from roadside tree care may:
 - (a) Be broadcast on a right-of-way except in ditches, waterways, turf, and surfaced areas, and
 - (b) Not exceed 6 inches in depth on the right-of-way;
- (9) The wrapping or winding of cable, wires, and other attachments around a tree, fastening attachments to a tree to bruise or injure a tree, or cavity work performed on a tree, is prohibited; and
- (10) When trees are removed, replacement of those trees according to a plan may be required by the Forest Service.

B. Tree Clearance for Overhead Facilities.

- (1) In addition to the requirements of §A of this regulation, a person who trims a tree to provide clearance for utility wires, cables, or other facilities shall:
 - (a) Allow sufficient clearance for 2 years growth normally expected after trimming, unless otherwise directed by the Forest Service;
 - (b) Take into account the health of the tree; and
 - (c) Make proper cuts that direct growth away from overhead wires and facilities in compliance with safety standards and government regulations.
- (2) If a trimmed tree dies within 1 year or is in poor condition of growth as a result of that trimming, the permittee shall, if required by the Forest Service, remove the tree and plant replacement trees.
- (3) Replacement trees shall be:
 - (a) Furnished by the permittee;
 - (b) In good condition;
 - (c) Of a recommended size and species; and

(d) Properly planted at locations to be determined by the Forest Service.

C. Ground Disturbance Requirements.

(1) The requirements set forth in this section:

(a) Are intended to protect roadside trees during construction, installation, and maintenance of a structure requiring excavation;

(b) Apply to underground utilities such as:

(i) Sewers,

(ii) Water and gas pipes,

(iii) Storm drains,

(iv) Electric, telephone, and television cables or conduits,

(v) Sidewalks,

(vi) Driveways, or

(vii) Roadways or similar structures.

(2) A permittee shall take all necessary measures to protect roadside trees from damage during construction and associated activities.

(3) Damage sustained by a tree, such as broken limbs, roots, or scarred trunks, including compaction damage, shall be repaired by the permittee.

(4) The Forest Service shall supervise the measures taken to protect and repair roadside trees under this section.

D. Protection of Tree Roots.

(1) When an underground project subject to §C of this regulation encounters the roots of a roadside tree, a permittee, in accordance with the guidelines in §D(2)----(15) of this regulation or other criteria approved by the Forest Service, shall tunnel or bore under the tree or modify the project to protect the tree's root system.

(2) For trees under 6 inches in diameter as measured 4 1/2 feet above average ground level, all machine digging shall stop at the dripline of the tree, or where specified by the Forest Service.

(3) For trees over 6 inches in diameter as measured 4 1/2 feet above average ground level, all machine digging shall stop when roots of 1 inch or more in diameter are encountered, or when specified by the Forest Service.

(4) Roots 1 inch or more in diameter may not be cut without approval of the Forest Service.

(5) A tunnel or other method of modification of the project under or around the tree shall be used if considered necessary by the Forest Service.

(6) The procedure noted in §D(5) of this regulation also shall be used to approach the tree from the opposite side.

(7) At least 24 inches of undisturbed earth shall remain over the tunnel or bore, or above other type of installation.

(8) For operations using shallow trenching techniques up to 12 inches deep, care shall be taken to minimize root damage and protect the trunk of the tree.

(9) Roots 1 inch or larger, damaged during construction, shall be sawed off close to the tree side of the ditch. Clean cuts shall be made at all times.

(10) Installations affecting roadside trees shall be completed in as short a time as possible to prevent the drying out of exposed roots.

(11) If considered necessary, the exposed root area within the ditch shall be watered and fertilized as directed by the Forest Service.

(12) Tunnels shall be refilled and the soil tamped tightly to original firmness.

(13) Trenches shall be filled to achieve and maintain original grade.

(14) Excess soil shall be removed from the site or disposed of as directed by the Forest Service.

(15) Unless otherwise directed by the Forest Service, the ground shall be fertilized and reseeded, cover shall be restored, and other procedures shall be followed as necessary to prevent erosion around trees.

E. Violations of Roadside Tree Standards.

(1) The Forest Service may require a person who fails to comply with §C or D of this regulation to:

(a) Remove and replace a tree which dies within 1 year after the treatment activity is completed;

(b) Document for 3 years the condition of a tree which shows decline within 1 year after the treatment activity is completed; and

(c) Remove and replace a tree which dies after 3 years following the completion of the treatment activity, if the tree has been the subject of the documentation in §E(1)(b) of this regulation.

(2) The value of a tree to be replaced is determined as of the date of the violation.

08.07.02.08

.08 Use of Pesticides.

A. The use or application of a pesticide to a tree on a public road right-of-way in the State is controlled as follows:

(1) A person applying a pesticide to a roadside tree shall have acquired certification and licensure required by the Maryland Department of Agriculture and shall adhere to regulations in COMAR 15.05.01;

- (2) A person applying a pesticide shall apply only those pesticides registered for that use by the U.S. Environmental Protection Agency and the Maryland Department of Agriculture, and shall follow the manufacturer's label directions for proper use;
- (3) Before the time of pesticide application, the Forest Service shall be notified by a permittee of the approximate time and place of application;
- (4) Except when authorized by the Forest Service, a tree may not be treated with herbicides unless it is 6 feet or less in height;
- (5) Dead plant material resulting from the application of an herbicide shall be removed if necessary for aesthetic or safety reasons, or both;
- (6) Reasonable precautions shall be taken to:
 - (a) Avoid the use of herbicides on vegetation which contributes to soil retention, particularly at highway cuts and fills and other areas with steep slopes, and
 - (b) Prevent the pollution of streams, and damage to adjoining properties.

08.07.02.09

.09 Roadside Tree Planting.

- A. Trees to be planted on a public road right-of-way are subject to the conditions in §§B and C of this regulation, in addition to conditions imposed by local ordinances.
- B. Trees shall be of a species and variety from the recommended tree list, and shall conform to the American Standard for Nursery Stock.
- C. Roadside tree planting shall comply with a planting plan approved by the Forest Service, which may include:
 - (1) Stump removal;
 - (2) Size and type of planting stock;
 - (3) Planting specifications;
 - (4) Spacing;
 - (5) Species;
 - (6) Proximity to overhead wires;
 - (7) Care and maintenance; and
 - (8) Other site considerations.

08.07.02.10

.10 Penalties.

Noncompliance with the provisions of this regulation constitutes a violation of law subject to the penalties provided in Natural Resources Article, §5-1301, Annotated Code of Maryland.

08.07.02.9999

Administrative History

Effective date: March 16, 1977 (4:6 Md. R. 505)

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Regulation .07A amended effective July 5, 1982 (9:13 Md. R. 1350)

Regulation .07A, C amended effective October 22, 1984 (11:21 Md. R. 1810)

Regulations .02—.09 repealed and new Regulations .02—.09 adopted effective January 31, 1994 (21:2 Md. R. 97)

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