

Regulatory Analysis Form

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INDEPENDENT REGULATORY
REVIEW COMMISSION



IRRC Number:

2086

(1) Agency Department of Agriculture

(2) I.D. Number (Governor's Office Use)
2-117

(3) Short Title
Noxious Weed Control List

(4) PA Code Cite
7 Pa. Code Chapter 110

(5) Agency Contacts & Telephone Numbers
Primary Contact: Will Mountain
717/772-5209
Secondary Contact: Lyle Forer
717/772-5203

(6) Type of Rulemaking (check one)
Proposed Rulemaking
Final Order Adopting Regulation XX
Final Order, Proposed Rulemaking Omitted

(7) Is a 120-Day Emergency Certification Attached?
No X
Yes: By the Attorney General
Yes: By the Governor

(8) Briefly explain the regulation in clear and nontechnical language.
The regulation will add two plants - Heracleum mantegazzianum (commonly known as Giant Hogweed) and Galega officinalis (commonly known as Goatsrue) - to the noxious weed control list, and increase the number of loosestrife species on the list by including all non-native Lythrum species, Lythrum virgatum, Lythrum salicaria and any cultivars or combinations thereof. Answer No. 11 contains a more detailed description of the plants and the reasons they should be included on the noxious weed control list.

(9) State the statutory authority for the regulation and any relevant state or federal court decisions.
This regulation is offered under authority of §§ 3(b) and 9 of the Noxious Weed Control Law (3 P.S. §§ 255.3(b) and 255.9), which, respectively, require that a noxious weed control list be established by regulation and empower the Department of Agriculture ("PDA") to promulgate regulations necessary to implement that statute.

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(10) Is the regulation mandated by any federal or state law or court order, or federal regulation? If yes, cite the specific law, case or regulation, and any deadlines for action.

No.

(11) Explain the compelling public interest that justifies the regulation. What is the problem it addresses?

The regulation addresses the presence of three different noxious weeds in the Commonwealth.

Giant Hogweed is a non-indigenous plant that causes skin irritation in some individuals who come into contact with its sap. It is known to be present in approximately 97 locations throughout Crawford, Erie, McKean, Venango and Warren Counties.

The Lythrum salicaria complex consists of non-indigenous wetland plants that clog waterways and crowd-out native plant and animal species, and those related plants that are capable of cross-breeding with Lythrum salicaria.

Goatsrue is toxic to livestock, but is known to exist in only one location in the Commonwealth. The regulation will help prevent this plant from spreading to other areas.

The regulation will give PDA authority to take steps under the Noxious Weed Control Law to contain or eliminate these plants in the Commonwealth.

(12) State the public health, safety, environmental or general welfare risks associated with nonregulation.

Some of the plants in the Lythrum salicaria complex clog waterways and crowd out native plant and animal species. Other plants in this complex are capable of cross-breeding with aquatic varieties of the plant and creating plants that are better adapted to the climate of Pennsylvania. Nonregulation would facilitate the spread of these plants.

Goatsrue is only known to exist in the Commonwealth in a single location: an arboretum in the Philadelphia area. Nonregulation might allow this plant to more easily spread. The plant is toxic to livestock.

Giant Hogweed causes rashes (similar to poison ivy) in some persons who come into contact with its sap. Given the fact the plant is only known to exist in approximately 97 locations in the Commonwealth, the regulation will help PDA contain and eradicate this plant before it spreads significantly further.

(13) Describe who will benefit from the regulation. (Quantify the benefits as completely as possible and approximate the number of people who will benefit.)

The regulation will benefit the ecology of the Commonwealth and will, therefore, benefit sportsmen, farmers and all other persons in the Commonwealth. It will contribute to the long-term diversity of native wetland plant and animal species, and will help contain wetland weed control costs.

In addition, the containment and eradication of Goatsrue will help animal owners avoid injuries to their animals.

Also, the containment and elimination of Giant Hogweed will be of benefit to any person whose skin is sensitive to the sap of the plant.

PDA cannot offer a reasonable estimate of the number of people who will benefit from the regulation or the value of the benefits.

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(14) Describe who will be adversely affected by the regulation. (Quantify the adverse effects as completely as possible and approximate the number of people who will be adversely affected.)

The addition of the Lythrum salicaria complex to the noxious weed control list will impact upon greenhouses and garden centers that sell ornamental varieties of that complex. The Department conducted two surveys in 1995 and concluded that less than 5% of the Commonwealth's nurseries, greenhouses and garden centers sold purple loosestrife and, of the locations that **did** sell purple loosestrife, the plants accounted for approximately 1.5% of sales. Since that time, the Department has made an effort to apprise sellers to discontinue propagating or selling purple loosestrife, in anticipation of the addition of the Lythrum salicaria complex to the noxious weed control list. For this reason it is believed this regulation will not impose appreciable costs upon the Commonwealth's nursery, greenhouse or garden center operations.

Although the regulation may affect any person owning property upon which Giant Hogweed, Goatsrue or a member of the Lythrum salicaria complex is present, the affect is expected to be positive.

(15) List the persons, groups or entities that will be required to comply with the regulation. (Approximate the number of people who will be required to comply.)

Plant nurseries and similar establishments that sell ornamental purple loosestrife cultivars would be required to comply with the regulation. In 1995 the Department surveyed 797 retail and wholesale plant sellers, as well as propagation facilities. Of these 797 facilities only 39 (4.9%) handled purple loosestrife cultivars. Since then the Department has made it known in horticultural organizations that it intended cultivars of purple loosestrife to be included under the phrase "Lythrum salicaria, commonly known as purple loosestrife" in the noxious weed control list. As a result, it is believed most (if not all) nurseries that handled purple loosestrife cultivars have ceased to do so, or are planning to do so shortly.

There are approximately 97 property owners in Crawford, Erie, McKean, Venango and Warren Counties who have Giant Hogweed on their property. Goatsrue is only known to be present in one location in the Commonwealth: an arboretum near Philadelphia. Once the regulation is promulgated, these property owners may be required to remove the Giant Hogweed or Goatsrue from their properties or allow others to remove the plants.

(16) Describe the communications with and input from the public in the development and drafting of the regulation. List the persons and/or groups who were involved, if applicable.

The subject matter of this regulation has been discussed extensively at growers' meetings, through circulation of literature and by correspondence with interested persons and groups.

(17) Provide a specific estimate of the costs and/or savings to the regulated community associated with compliance, including any legal, accounting or consulting procedures which may be required.

Since neither Goatsrue nor Giant Hogweed are sold commercially in the Commonwealth, the addition of these plants to the noxious weed control list is not expected to result in appreciable costs to the regulated community. Although members of the Lythrum salicaria complex have been sold commercially in the Commonwealth in the past, these plants have accounted for a very small percentage of sales at nurseries and garden centers that stocked them. In addition, the Department

has informed garden centers and nurserymen of the need to control these plants and has provided advance notice of its intention to regulate to add the entire Lythrum salicaria complex to the noxious weed control list. As a result, it is believed most (if not all) nurseries that handled purple loosestrife cultivars have ceased to do so, or are planning to do so shortly. For this reason, the estimated cost of compliance is estimated to be minimal.

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(18) Provide a specific estimate of the costs and/or savings to local governments associated with compliance, including any legal, accounting or consulting procedures which may be required.

This regulation is not expected to result in the imposition of costs on local government. The ultimate effect of this regulation might be to reduce State and local government costs with respect to complying with the Noxious Weed Control Law by limiting the spread of purple loosestrife and its cultivars and eliminating Giant Hogweed and Goatsrue.

(19) Provide a specific estimate of the costs and/or savings to state government associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required.

Although PDA cannot provide a specific estimate of the savings that will result from this regulation, it believes the savings to be gained from this regulation will outweigh any costs. PDA will not require new personnel or new legal, accounting or consulting procedures to implement the regulation. On the other hand, the regulation will help eliminate a non-indigenous plant that is toxic to livestock (Goatsrue), contain and eliminate a non-indigenous plant which can cause skin rashes (Giant Hogweed) and prevent members of the Lythrum salicaria complex from breeding with non-indigenous members of that complex to create new, more hardy hybrids to clog Pennsylvania's waterways and crowd-out native plant and animal species.

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(20) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years. See answer 20a below.

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
SAVINGS:	\$	\$	\$	\$	\$	\$
Regulated						
Local Government						
State Government						
Total Savings						
COSTS:						
Regulated						
Local Government						
State Government						
Total Costs						
REVENUE LOSSES:						
Regulated						
Local Government						
State Government						
Total Revenue Losses						

(20a) Explain how the cost estimates listed above were derived.

Answers 17, 18 and 19 explain the cost/savings to be realized by the regulated community and State and local governments. The regulation will ultimately help benefit the environment by giving PDA authority under the Noxious Weed Control Law to identify, contain and eradicate certain non-native plants that have made their way into the Commonwealth.

Regulatory Analysis Form

(20b) Provide the past three year expenditure history for programs affected by the regulation.

Program	FY -3	FY -2	FY -1	Current FY
Noxious Weed Control	\$45,000	\$45,000	\$45,000	\$45,000

(21) Using the cost-benefit information provided above, explain how the benefits of the regulation outweigh the adverse effects and costs.
See answers 17, 18 and 19.

(22) Describe the nonregulatory alternatives considered and the costs associated with those alternatives. Provide the reasons for their dismissal.

No nonregulatory alternatives were considered, since the Noxious Weed Control Law requires additions to the noxious weed control list be accomplished through regulation.

(23) Describe alternative regulatory schemes considered and the costs associated with those schemes. Provide the reasons for their dismissal.

No alternative regulatory schemes were considered.

Regulatory Analysis Form

(24) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulation. The regulation would not establish standards that are more severe than Federal standards.

(25) How does this regulation compare with those of other states? Will the regulation put Pennsylvania at a competitive disadvantage with other states? The regulation will not put Pennsylvania at a competitive disadvantage with other states. The plants addressed in this regulation are commonly included in noxious weed control lists of other states.

(26) Will the regulation affect existing or proposed regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

No.

(27) Will any public hearings or informational meetings be scheduled? Please provide the dates, times, and locations, if available.

No.

Regulatory Analysis Form

(28) Will the regulation change existing reporting, record keeping, or other paperwork requirements? Describe the changes and attach copies of forms or reports which will be required as a result of implementation, if available.

No.

(29) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

No special provisions have been added to meet the particular needs of affected groups of persons.

(30) What is the anticipated effective date of the regulation; the date by which compliance with the

regulation will be required; and the date by which any required permits, licenses or other approvals must be obtained?

The regulation shall take effect on the earliest date compatible with the promulgation process prescribed by the Regulatory Review Act.

(31) Provide the schedule for continual review of the regulation.

The efficacy of the regulation would be reviewed on a continuous basis.

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REGULATORY
REVIEW COMMISSION

DO NOT WRITE IN THIS SPACE

Copy below is hereby approved as to form and legality. Attorney General

By: _____
(Deputy Attorney General)

DATE OF APPROVAL

Check if applicable
Copy not approved. Objections attached.

Copy below is hereby certified to be true and correct copy of a document issued, prescribed or promulgated by:

Department of Agriculture
(AGENCY)

DOCUMENT/FISCAL NOTE NO. _____

DATE OF ADOPTION July 18, 2000

BY *Samuel E. Hayes, Jr.*
SAMUEL E. HAYES, JR.

TITLE Secretary of Agriculture

EXECUTIVE OFFICER CHAIRMAN OR SECRETARY

Copy below is hereby approved as to form and legality. Executive or Independent Agencies

BY *Sandra W. Ston*

9-12-00
DATE OF APPROVAL

(Deputy General Counsel)
~~(Chief Counsel - Independent Agency)~~
(Strike inapplicable title)

Check if applicable. No Attorney General Approval or objection within 30 days after submission.

NOTICE OF FINAL RULEMAKING

Title 7 - AGRICULTURE

DEPARTMENT OF AGRICULTURE

[7 PA. CODE CH. 110]

Noxious Weeds

Title 7 – Agriculture
DEPARTMENT OF AGRICULTURE
[7 PA. CODE CH. 110]
Noxious Weeds

The Department of Agriculture (Department) hereby amends the regulation in 7 Pa. Code § 110.1 (relating to noxious weed control list) to designate *Lythrum salicaria* (purple loosestrife), *Lythrum virgatum* and their cultivars and combinations thereof as "noxious weeds" and to add *Galega officinalis* (Goatsrue) and *Heracleum mantegazzianum* (Giant Hogweed) to the noxious weed control list. The text of this amendment is set forth in Annex A.

Statutory Authority

Sections 3(b), 8 and 9 of the Noxious Weed Control Law (act) (3 P. S. §§ 255.3(b), 255.8 and 255.9), respectively, require the Department to establish a noxious weed control list, prescribe certain plants to be included on that list and empower the Department to adopt regulations necessary to implement the act. The regulation is advanced under authority of these statutory provisions.

Need for the Regulation

There is a compelling public need to protect this Commonwealth's wetland plant and animal populations from the threat posed by nonnative purple loosestrife, cultivars of the plants and cultivars that are combinations of native and nonnative purple loosestrife species.

The addition of Giant Hogweed to the noxious weed control list is necessary to provide the Department needed authority to control and eradicate this nonindigenous plant at the locations in Crawford, Erie, McKean, Venango and Warren Counties where it has appeared. The sap of this plant can cause rashes on the skin of persons with whom it comes into contact.

The addition of Goatsrue to the noxious weed control list will provide the Department needed authority to address the presence of this nonindigenous plant at the Philadelphia area location where it has been detected. This plant is toxic to livestock.

Lythrum salicaria, commonly known as purple loosestrife, is a nonnative wetland plant that thrives in the absence of the insects and diseases that controlled it in Europe and Asia. It clogs waterways, crowds-out native plant species and decreases the population of animals that are dependent upon these native plant species for survival. For this reason the Department placed "*Lythrum salicaria*," commonly known as "purple loosestrife" on the noxious weed control list in § 110.1. This regulatory change was published in 27 Pa.B. 1704 (April 12, 1997) and became effective on that date.

Since *Lythrum salicaria* was added to the noxious weed control list, the need to add other *Lythrum* species and their cultivars and combinations has become

apparent. There are many cultivars (cultivated varieties) of purple loosestrife that are listed under species names other than *Lythrum salicaria*. These other species and cultivars present as great an environmental threat as does *Lythrum salicaria*. The regulation addresses the threat posed by these plants.

Lythrum virgatum is a source of purple loosestrife cultivars. Like *Lythrum salicaria*, *Lythrum virgatum* is a European wetland plant that has been introduced into North America. These two species are very similar, differing in only several minor diagnostic characteristics. The two also cross pollinate freely. For this reason, a number of plant specialists consider *Lythrum salicaria* and *Lythrum virgatum* to be the same species. The fact that these plants intercross freely has also helped to blur scientific distinctions between cultivars of the two.

Until recently, the various ornamental purple loosestrife cultivars were thought to be sterile. As such, there would be no danger these plants could naturally cross breed with *Lythrum salicaria* and pass along genetic traits which might make purple loosestrife an even greater ecological threat than it is already. Recent research, though, has shown that no purple loosestrife cultivar is sterile.

Although most cultivars are self-sterile (that is, incapable of reproducing alone), they produce large quantities of viable seed when functioning as either male or female parents in cross breeding with other cultivars and species of loosestrife. Bees and wasps are effective pollinators of loosestrife, and provide the means for cross pollination - even between plants that are a considerable distance from each other.

It is possible a relatively benign ornamental cultivar of indigenous purple loosestrife could cross breed with *Lythrum salicaria* and produce a new cultivar of purple loosestrife that combines the native species' tolerance of this Commonwealth's temperature extremes or its ability to thrive in areas other than wetlands with the aggressive growth characteristics and the disease resistant characteristics, or both, of *Lythrum salicaria*. This is not abstract speculation. Some genetic traits of *Lythrum salicaria* have already been found in cultivars of purple loosestrife.

Galega officinalis, commonly known as Goatsrue, is a nonnative plant that is on the Federal noxious weed list and is toxic to livestock. Goatsrue is only known to exist in this Commonwealth at an arboretum in the Philadelphia area.

Heracleum mantegazzianum, commonly known as Giant Hogweed, is a nonnative plant that is on the Federal noxious weed list and causes skin rashes on many persons who come into contact with it. The plant is only known to be present in this Commonwealth in Crawford, Erie, McKean, Venango and Warren Counties.

In summary, the Department is satisfied there is a need for the regulations, and that they are otherwise consistent with Executive Order 1996-1, "Regulatory Review and Promulgation."

Comments

Notice of Proposed Rulemaking was published at 30 *Pennsylvania Bulletin* 636 (February 5, 2000), and provided for a 30-day public comment period. Neither the Legislative Committees nor the Independent Regulatory Review Commission (IRRC) offered comment with respect to that document.

The *sole* comment originated from the Pennsylvania Landscape and Nursery Association (PLNA). Although PLNA supports the addition of *Lythrum salicaria* (purple loosestrife), *Galega officinalis* (Goatsrue), *Heracleum mantegazzianum* (Giant Hogweed) and *Lythrum virgatum* to the noxious weed control list, it expressed concern regarding the addition of the **cultivars and combinations** of *Lythrum salicaria* and *Lythrum virgatum* to that list. Rather than a broad designation of these cultivars and combinations as noxious weeds, PLNA recommended each such cultivar or combination be evaluated and considered individually for inclusion on the noxious weed control list. PLNA offered the opinion there is not "... enough evidence to support that *all* cultivars, both current and future, should be considered noxious weeds."

The Department gave careful consideration to PLNA's comment. On balance, the Department is satisfied that *all* cultivars and combinations of *Lythrum salicaria* and *Lythrum virgatum* should be included on the noxious weed control list, and that current scientific research supports this position.

Research conducted in Minnesota has shown that no purple loosestrife cultivar is sterile. All cultivars can produce viable seeds when crossed with other cultivars and species, including *Lythrum alatum* (winged loosestrife), a non-invasive native of wetlands. The cultivars pose a great risk because - unlike the parent species - they are adapted to grow in drier soils. Continued crossing between cultivars and parent species can lead to new genetic combinations that would allow loosestrife to colonize drier, more upland habitats, making it an even more troublesome weed.

The Department also believes that – *even were it inclined to do so* – it could not draw a *workable* regulatory line to exclude any particular cultivar or combination of *Lythrum salicaria* and *Lythrum virgatum* from the noxious weed control list. Distinguishing between cultivars of loosestrife is difficult at best. Like-named cultivars may look different and differently-named cultivars may appear identical. This situation would be unworkable for any plant inspector or botanist tasked with making a precise identification of a particular cultivar or combination.

The Department is mindful that certain cultivars or combinations of *Lythrum salicaria* and *Lythrum virgatum* are produced and sold commercially in the Commonwealth, and that such plants are not uncommon in ornamental flower gardens. It is satisfied, though, that there are numerous perennial plants that are suitable substitutes for these cultivars or combinations. The Commonwealth's plant nursery industry has been provided several years' advance notice that cultivars or

combinations of *Lythrum salicaria* and *Lythrum virgatum* would be included on the noxious weed control list, and the Department believes the industry has prepared for this regulation by eliminating stocks of these plants and/or obtaining suitable substitutes for these plants. The Department views the inclusion of these plants on the noxious weed control list as the first logical step toward reducing the prevalence of these plants in the Commonwealth.

The Department is currently cooperating with the United States Department of Agriculture on a biocontrol project with respect to purple loosestrife. The project involves the release of several different species of beetles that attack loosestrife. Tests have shown these insects capable of drastically reducing loosestrife populations in natural areas, thereby allowing native plants to begin reclaiming these environments. The Department believes it would be self-defeating to allow sale of even a single cultivar or combination of loosestrife while it simultaneously pursues biological control efforts with respect to these plants.

On balance, the Department is satisfied that *all* cultivars and combinations of *Lythrum salicaria* and *Lythrum virgatum* should be included on the noxious weed control list, and that current scientific research supports this position.

Fiscal Impact

Commonwealth

The final-form regulation will not impose appreciable costs upon the Commonwealth.

Political Subdivisions

The final-form regulation will not impose appreciable costs upon political subdivisions.

Private Sector

The final-form regulation will not impose appreciable costs upon the private sector. Only a small percentage of this Commonwealth's plant nurseries and similar establishments ever handled purple loosestrife. Of those that did, sales of those plants comprised only a small part of their business. As a result of the nursery industry's awareness of the environmental threat posed by purple loosestrife and the fact the final-form regulation was forthcoming, it is believed the fiscal impact of this amendment upon the private sector will be insignificant.

The inclusion of Goatsrue and Giant Hogweed on the Noxious Weed Control List is not expected to result in significant costs to the private sector. These plants are present in relatively few locations in this Commonwealth, and can be eliminated without significant expense.

General Public

The final-form regulation will not impose appreciable costs upon the general public.

Paperwork Requirements

The final-form regulation will not result in an appreciable increase in the amount of paperwork handled by the Department, or increase the paperwork burden of political subdivisions, the private sector or the general public.

Contact Person

Further information is available by contacting the Department of Agriculture, Bureau of Plant Industry, 2301 North Cameron Street, Harrisburg, PA 17110-9408, Attention: Will Mountain.

Regulatory Review

Under § 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), the Department submitted a copy of the Notice of Proposed Rulemaking published at 30 *Pennsylvania Bulletin* 636 (February 5, 2000) on January 24, 2000 to the Independent Regulatory Review Commission and to the Chairpersons of the House and Senate Standing Committees on Agriculture and Rural Affairs for review and comment. In compliance with § 5(b.1), the Department also provided the Commission and the Committees with copies of all comments received, as well as other documentation.

In preparing this final-form regulation, the Department has considered all comments received from the Commission, the Committees and the public.

This final-form regulation was (deemed) approved by the House Agricultural and Rural Affairs Committee on _____, was (deemed) approved by the Senate Agriculture and Rural Affairs Committee on _____, and was (deemed) approved by the Commission on _____.

Findings

The Department of Agriculture finds the following:

- (1) Public notice of its intention to adopt the regulation encompassed by this Order has been given under §§ 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240)(45 P.S. §§ 1201 and 1202) and their attendant regulations at 1 Pa. Code §§ 7.1 and 7.2.
- (2) A public comment period was provided as required by law and all comments received were considered.
- (3) Any modifications that were made to this regulation in response to comments received do not enlarge the purpose of the proposed regulation published at 30 *Pennsylvania Bulletin* 636 (February 5, 2000).
- (4) The adoption of the regulation in the manner provided in this Order is necessary and appropriate for the administration of the authorizing statute.

Order

The Department of Agriculture, acting under authority of the authorizing statute, orders the following:

- (1) The current regulations of the Department of Agriculture at 7 Pa. Code Chapter 110 (relating to noxious weeds) are revised as set forth at Annex "A" hereto.
- (2) The Secretary of Agriculture shall submit this Order, 30 *Pennsylvania Bulletin* 636 (February 5, 2000) and Annex "A" hereto shall be submitted to the Office of General Counsel and to the Office of Attorney General for approval as required by law.
- (3) The Secretary of Agriculture shall certify this Order, 30 *Pennsylvania Bulletin* 636 (February 5, 2000) and Annex "A" hereto and deposit them with the Legislative Reference Bureau as required by law.
- (4) This Order shall take effect upon publication in the *Pennsylvania Bulletin*.

BY THE DEPARTMENT OF AGRICULTURE

Samuel E. Hayes, Jr., Secretary

Annex A
TITLE 7. AGRICULTURE
PART V. PLANT INDUSTRY
CHAPTER 110. NOXIOUS WEEDS

§ 110.1. Noxious weed control list.

Under section 3(b) of the Noxious Weed Control Law (3 P. S. § 255.3(b)), the Noxious Weed Control Committee establishes the following noxious weed control list:

* * * * *

(2) [*Lythrum salicaria*, commonly known as purple loosestrife.] The *Lythrum salicaria* Complex: Any nonnative *Lythrum* including, *Lythrum salicaria* and *Lythrum virgatum*, their cultivars and any combinations thereof.

* * * * *

(12) *Heracleum mantegazzianum*, commonly known as Giant Hogweed.

(13) *Galega officinalis*, commonly known as Goatsrue.



PROPOSED RULEMAKING

DEPARTMENT OF AGRICULTURE

[7 PA. CODE CH. 110]

Noxious Weeds

[30 Pa.B. 636]

The Department of Agriculture (Department) proposes to amend the regulation in 7 Pa. Code § 110.1 (relating to noxious weed control list) to designate *Lythrum salicaria* (purple loosestrife), *Lythrum virgatum* and their cultivars and combinations thereof as "noxious weeds." The Department also proposes to add *Galega officinalis* (Goatsrue) and *Heracleum mantegazzianum* (Giant Hogweed) to the noxious weed control list.

Statutory Authority

Sections 3(b), 8 and 9 of the Noxious Weed Control Law (act) (3 P. S. §§ 255.3(b), 255.8 and 255.9), respectively, require the Department to establish a noxious weed control list, prescribe certain plants to be included on that list and empower the Department to adopt regulations necessary to implement the act. The proposed amendment is advanced under authority of these statutory provisions.

Need for the Regulation

There is a compelling public need to protect this Commonwealth's wetland plant and animal populations from the threat posed by nonnative purple loosestrife, cultivars of the plants and cultivars that are combinations of native and nonnative purple loosestrife species.

The addition of Giant Hogweed to the noxious weed control list is necessary to provide the Department needed authority to control and eradicate this nonindigenous plant at the locations in Crawford, Erie, McKean, Venango and Warren Counties where it has appeared. The sap of this plant can cause rashes on the skin of persons with whom it comes into contact.

The addition of Goatsrue to the noxious weed control list will provide the Department needed authority to address the presence of this nonindigenous plant at the Philadelphia area location where it has been detected. This plant is toxic to livestock.

The proposed amendment meets the other relevant regulatory criteria described in Executive Order 1996-1 ("Regulatory Review and Promulgation").

Background

Lythrum salicaria, commonly known as purple loosestrife, is a nonnative wetland plant that thrives in the absence of the insects and diseases that controlled it in Europe and Asia. It clogs waterways, crowds-out native plant species and decreases the population of animals that are dependent upon these native plant species for survival. For this reason the Department placed "*Lythrum salicaria*," commonly known as "purple loosestrife" on the noxious weed control list in § 110.1. This regulatory change was published in 27 Pa.B. 1704 (April 12, 1997) and became effective on that date.

Since *Lythrum salicaria* was added to the noxious weed control list, the need to add other *Lythrum* species and their cultivars and combinations has become apparent. There are many cultivars (cultivated varieties) of purple loosestrife that are listed under species names other than *Lythrum salicaria*. These other species and cultivars present as great an environmental threat as does *Lythrum salicaria*. The proposed amendment addresses the threat posed by these plants.

Lythrum virgatum is a source of purple loosestrife cultivars. Like *Lythrum salicaria*, *Lythrum virgatum* is a European wetland plant that has been introduced into North America. These two species are very similar, differing in only several minor diagnostic characteristics. The two also cross pollinate freely. For these reason, a number of plant specialists consider *Lythrum salicaria* and *Lythrum virgatum* to be the same species. The fact that these plants intercross freely has also helped to blur scientific distinctions between cultivars of the two.

Until recently, the various ornamental purple loosestrife cultivars were thought to be sterile. As such, there would be no danger these plants could naturally cross breed with *Lythrum salicaria* and pass along genetic traits which might make purple loosestrife an even greater ecological threat than it is already. Recent research, though, has shown that no purple loosestrife cultivar is sterile.

Although most cultivars are self-sterile (that is, incapable of reproducing alone), they produce large quantities of viable seed when functioning as either male or female parents in cross breeding with other cultivars and species of loosestrife. Bees and wasps are effective pollinators of loosestrife, and provide the means for cross pollination, even between plants that are a considerable distance from each other.

It is possible a relatively benign ornamental cultivar of indigenous purple loosestrife could cross breed with *Lythrum salicaria* and produce a new cultivar of purple loosestrife that combines the native species' tolerance of this Commonwealth's temperature extremes or its ability to thrive in areas other than wetlands with the aggressive growth characteristics and the disease resistant characteristics, or both, of *Lythrum salicaria*. This is not abstract speculation. Some genetic traits of *Lythrum salicaria* have already been found in cultivars of purple loosestrife.

Galega officinalis, commonly known as Goatsrue, is a nonnative plant that is on the Federal noxious weed list and is toxic to livestock. Goatsrue is only known to exist in this Commonwealth at an arboretum in the Philadelphia area.

Heracleum mantegazzianum, commonly known as Giant Hogweed, is a nonnative plant that is on the Federal noxious weed list and causes skin rashes on many persons who come into contact with it. The plant is only known to be present in this Commonwealth in Crawford, Erie, McKean, Venango and Warren Counties.

In light of the foregoing, the Department proposes to amend the regulation in § 110.1 to add all nonnative *Lythrum* species--including *Lythrum salicaria*, *Lythrum virgatum*,

their cultivars and combinations thereof--as well as *Galega officinalis* and *Heracleum mantegazzianum*, to the noxious weed control list.

Section 3(c) of the act requires the Noxious Weed Control Committee hold a hearing before adding plants to the noxious weed control list. This hearing was held on August 20, 1998, at which time the Noxious Weed Control Committee voted its unanimous approval of the proposed regulation.

Persons Likely to be Affected

The act affects owners of lands upon which noxious weeds are located, as well as entities which produced or market noxious weeds. The proposed amendment will affect persons who own lands upon which the designated species, cultivars and combinations of purple loosestrife are located, and plant nurseries and similar establishments that sell or market ornamental varieties of purple loosestrife.

The amendment will also affect the Philadelphia-area arboretum where Goatsrue is known to be present.

The amendment will also affect owners of the 97 sites in Crawford, Erie, McKean, Venango and Warren Counties where Giant Hogweed is present.

Of the three plants proposed for inclusion on the noxious weed control list, only purple loosestrife cultivars are sold commercially as ornamental plants. In 1995, the Department surveyed 797 retail and wholesale plant sellers and only 39 (4.9%) handled purple loosestrife cultivars. Purple loosestrife sales were not a significant component of the business conducted by any of these 39 businesses. Since that survey, the Department has used its field personnel, trade publications and horticultural organization meetings to apprise the plant production industry of the forthcoming restrictions with respect to purple loosestrife. Most, if not all, of the businesses that once handled purple loosestrife no longer do so.

Fiscal Impact

Commonwealth

The proposed amendment would impose no costs and have no fiscal impact upon the Commonwealth.

Political Subdivisions

The proposed amendment would impose no costs and have no fiscal impact upon political subdivisions.

Private Sector

The proposed amendment would impose no costs and have no applicable fiscal impact upon the private sector. Only a small percentage of this Commonwealth's plant nurseries and similar establishments ever handled purple loosestrife. Of those that did, sales of those plants comprised only a small part of their business. As a result of the nursery industry's awareness of the environmental threat posed by purple loosestrife and the fact the proposed amendment was forthcoming, it is believed the fiscal impact of this amendment upon the private sector will be insignificant.

The inclusion of Goatsrue and Giant Hogweed on the Noxious Weed Control List is not expected to result in significant costs to the private sector. These plants are present in relatively few locations in this Commonwealth, and can be eliminated without significant expense.

General Public

The proposed amendment would impose no costs and have no fiscal impact upon the general public.

Paperwork Requirements

The proposed amendment would not result in an appreciable increase in paperwork.

Public Comment Period

The public comment period with respect to the proposed amendment is for 30 days from the date of publication in the *Pennsylvania Bulletin*.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on January 24, 2000, the Department submitted a copy of the proposed amendment to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and the Senate Standing Committees on Agriculture and Rural Affairs. In addition to submitting the proposed amendment, the Department has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Department in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, if IRRC has an objection to any portion of the proposed regulation, it will notify the Department within 10 days after the close of the Committees' review period. The notification shall specify the regulatory review criteria which have not been met by the portion of the proposed amendment with respect to which an objection is made. The Regulatory Review Act specifies detailed procedures for review of these objections by the Department, the General Assembly and the Governor prior to final publication of the proposed amendment.

Contact Person

Further information is available by contacting the Department of Agriculture, Bureau of Plant Industry, 2301 North Cameron Street, Harrisburg, PA 17110-9408, Attention: Will Mountain.

Sunset/Expiration Date

Although the proposed amendment would have no sunset date, its efficacy would be reviewed on an ongoing basis.

Effective Date

The proposed amendment would take effect on the date of final adoption.

SAMUEL E. HAYES, Jr.,
Secretary

Fiscal Note: 2-117. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 7. AGRICULTURE

PART V. PLANT INDUSTRY

CHAPTER 110. NOXIOUS WEEDS

§ 110.1. Noxious weed control list.

Under section 3(b) of the Noxious Weed Control Law (3 P. S. § 255.3(b)), the Noxious Weed Control Committee establishes the following noxious weed control list:

* * * * *

(2) [*Lythrum salicaria*, commonly known as purple loosestrife.] The *Lythrum salicaria* Complex: Any nonnative *Lythrum* including, *Lythrum salicaria* and *Lythrum virgatum*, their cultivars and any combinations thereof.

* * * * *

(12) *Heracleum mantegazzianum*, commonly known as Giant Hogweed.

(13) *Galega officinalis*, commonly known as Goatsrue.

[Pa.B. Doc. No. 00-214. Filed for public inspection February 4, 2000, 9:00 a.m.]

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COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF AGRICULTURE
LEGAL OFFICE

September 15, 2000

Independent Regulatory Review Commission
333 Market Street
14th Floor
Harrisburg, PA 17120

Re: FINAL-FORM REGULATION
Department of Agriculture
Bureau of Plant Industry
7 Pa. Code Chapter 110
I.D. No. 2-117
Proposed Rulemaking: 30 Pennsylvania Bulletin
636 (February 5, 2000)
Final-Form Regulation Approved by
Office of General Counsel: September 12, 2000

Dear Sirs:

Please find enclosed a copy of the above-referenced final-form regulation. This material includes copies of the Preamble and Annex "A". Copies of the Notice of Proposed Rulemaking and Regulatory Analysis Form are also enclosed.

I respectfully request the Independent Regulatory Review Commission review and approve the above-referenced final-form regulation in accordance with the requirements and procedures of the Regulatory Review Act.

This Department's responses to the comments received from the public, the Legislature and the Independent Regulatory Review Commission with respect to the proposed regulation are set forth in the Preamble to the final-form regulation. Copies of this final-form regulation have been delivered to applicable Legislative Committees (the House and Senate Committees for Agriculture and Rural Affairs), and have been mailed or delivered to each commentator on this date.

The Department will provide you with any assistance you may require to facilitate a thorough review of this final-form regulation. Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "D. J. Smith".

Dwight-Jared Smith
Assistant Counsel

Enclosures

2301 NORTH CAMERON STREET
HARRISBURG, PA 17110-9408
717-787-8744
FAX 717-787-1270

TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE
REGULATORY REVIEW ACT

RECEIVED

I.D. NUMBER: 2-117
SUBJECT: Noxious Weeds
AGENCY: DEPARTMENT OF AGRICULTURE

2000 SEP 15 PM 3:22

INDEPENDENT REGULATORY
REVIEW COMMISSION

#2086

TYPE OF REGULATION

- Proposed Regulation
- X Final Regulation
- Final Regulation with Notice of Proposed Rulemaking Omitted
- 120-day Emergency Certification of the Attorney General
- 120-day Emergency Certification of the Governor
- Delivery of Tolled Regulation
 - a. With Revisions
 - b. Without Revisions

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
9/15/00	<i>A. Bossart</i>	HOUSE COMMITTEE ON AGRICULTURE & RURAL AFFAIRS
9/15/00	<i>L. Kauffman</i>	SENATE COMMITTEE ON AGRICULTURE & RURAL AFFAIRS
9/15/00	<i>Tina Robert</i>	INDEPENDENT REGULATORY REVIEW COMMISSION
		ATTORNEY GENERAL
		LEGISLATIVE REFERENCE BUREAU

September 12, 2000