			PEOFINE	<u>D</u>	
Regulatory Analysis			This space for use by IRRC 2000 JAN 24 PM 3: 06		
Form			REVIEW COMMISSION		
(1) Agency Department of Agriculture				<i>©</i>	
(2) I.D. Number (Governor's Office Use) 2-117		Mizner			
			IRRC Number:	#2086	
(3) Short Title Noxious Weed Control List					
(4) PA Code Cite	(5) Agency Contacts & Telephone Numbers				
7 Pa. Code Chapter 110	Primary Contact: Will Mountain 717/772-5209 Secondary Contact: Lyle Forer				
	<u> </u>		/772-5203		
(6) Type of Rulemaking (check one) Proposed Rulemaking X		(7) Is a 120-D Attached?	Day Emergency Certification		
Final Order Adopting Regulation		No X			
			Attorney General		
		Yes: By the	•		
(8) Briefly explain the regulation in clear and nontechnical language. The regulation will add two plants – <u>Heracleum mantegazzianum</u> (commonly known as Giant Hogweed) and <u>Galega officinalis</u> (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 <u>Lythrum</u> species, <u>Lythrum virgatum</u> , <u>Lythrum salicaria</u> 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.					
<ul> <li>(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.</li> </ul>					

# Regulatory Analysis Form

(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 <u>Lythrum salicaria</u> 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 <u>Lythrum salicaria</u>.

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 that plant.

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

# Regulatory Analysis Form

(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 that 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 <u>Lythrum salicaria</u> 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 Hogwood 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 <u>Lythrum salicaria</u> 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.

# Regulatory Analysis Form

(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.

Regulatory Analysis Form (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 FY** +1 **FY** +2 **FY** +3 **FY** +4 **FY** +5 Year Year Year Year Year Year SAVINGS: \$ \$ \$

Regulated			
Local Government			
State Government			
Total Savings			 
COSTS:			
Regulated			
Local Government			
State Government			
Total Costs			 
<b>REVENUE LOSSES:</b>			
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 nonnative plants that have made their way into the Commonwealth.

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

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.

(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.

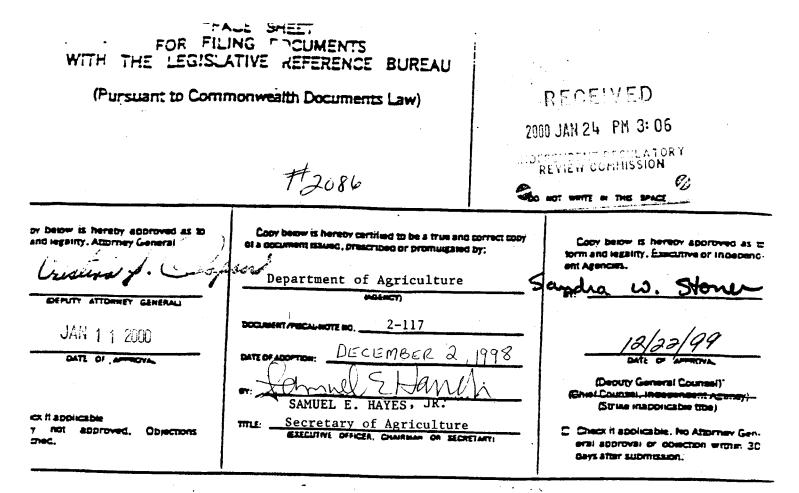
No special provisions have been added to meet the particular needs of affected groups of persons.

(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.



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

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## TITLE 7 - AGRICULTURE [7 PA. CODE CH. 110] Noxious Weeds

The Department of Agriculture (Department) proposes to amend the regulation at 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 <u>Galega officinalis</u> (Goatsrue) and <u>Heracleum mantegazzianum</u> (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 provisions of the Act. The proposed regulation is advanced under authority of these statutory provisions.

#### Need for the Regulation

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

The addition of Giant Hogweed to the noxious weed control list is necessary in order 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 non-indigenous plant at the Philadelphia area location where it has been detected. This plant is toxic to livestock.

The proposed regulation 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 non-native 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 at 7 Pa. Code § 110.1. This regulatory change was published at 27 Pa. Bulletin 1704 on 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 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 these reasons, 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 any meaningful 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 <u>Lythrum salicaria</u> 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 (i.e., 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.

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

<u>Galega officinalis</u>, commonly known as Goatsrue, is a non-native plant that is on the Federal noxious weed list and is toxic to livestock. Goatsrue is only known to exist in the Commonwealth at an arboretum in the Philadelphia area.

<u>Heracleum mantegazzianum</u>, 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 the Commonwealth in Crawford, Erie, McKean, Venango and Warren Counties. In light of the foregoing, the Department proposes to amend the regulation at 7 Pa. Code § 110.1 to add all non-native Lythrum species - including Lythrum salicaria, Lythrum virgatum, their cultivars and combinations thereof - as well as <u>Galega officinalis</u> and <u>Heracleum mantegazzianum</u>, to the noxious weed control list.

Section 3(c) of the Act (3 P.S. § 255.3(c)) 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 produce or market noxious weeds. The proposed regulation 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 regulation will also affect the Philadelphia-area arboretum where Goatsrue is known to be present.

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

#### **Political Subdivisions**

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

#### **Private Sector**

The proposed regulation would impose no costs and have no appreciable fiscal impact upon the private sector. Only a small percentage of the 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 regulation was forthcoming, it is believed the fiscal impact of this regulation 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 the Commonwealth, and can be eliminated without significant expense.

#### **General Public**

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

## **Paperwork Requirements**

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

### **Public Comment Period**

The public comment period with respect to the proposed regulations shall run for 30 days from the date of publication in the <u>Pennsylvania Bulletin</u>.

## **Regulatory Review**

Under § 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on  $\underline{Januar} = 24$ ,  $\underline{\partial}UOO$ , the Department submitted a copy of the proposed regulations to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate Standing Committees on Agriculture and Rural Affairs. In addition to submitting the proposed regulations, 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 § 5(g) of the Regulatory Review Act, if IRRC has an objection to any portion of the proposed regulation, it must so 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 regulations with respect to which an objection is made. The Regulatory Review Act sets forth detailed procedures for review of these objections by the Department, the General Assembly and the Governor prior to final publication of the proposed regulations.

# **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 regulations would have no sunset date, their efficacy would be reviewed on an ongoing basis.

# **Effective Date**

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

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:

(1) Cannabis sativa, commonly known as marijuana.

(2) [Lythrum salicaria, commonly known as purple loosestrife.] The Lythrum salicaria Complex: Any non-native Lythrum including, but not limited to, Lythrum salicaria and Lythrum virgatum, their cultivars and any combinations thereof.

- (3) Cirsium arvense, commonly known as Canadian thistle.
- (4) Rosa multiflora, commonly known as multiflora rose.
- (5) Sorghum halepense, commonly known as Johnson grass.
- (6) Carduus nutans, commonly known as musk thistle.
- (7) Cirsium vulgare, commonly known as bull thistle.
- (8) Datura stramonium, commonly known as jimson weed.
- (9) Polygonum perfoliatum, commonly known as mile-a-minute.
- (10) Puerria lobata, commonly known as kudzuvine.

(11) Sorghum bicolor cv. drummondii, commonly known as shattercane.

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

(13) Galega officinalis, commonly known as Goatsrue.



#### COMMONWEALTH OF PENNSYLVANIA DEPARTMENT OF AGRICULTURE LEGAL OFFICE

January 24, 2000

The Independent Regulatory Review Commission 14<sup>th</sup> Floor 333 Market Street Harristown #2 Harrisburg, PA 17120

# Re: PROPOSED RULEMAKING Department of Agriculture, Bureau of Plant Industry 7 Pa. Code Chapter 110: Noxious Weeds I.D. No. 2-117

Dear Sirs:

Please find enclosed copies of the Face Sheet, Preamble, Annex "A" and Regulatory Analysis Form with respect to the above proposed regulation.

Copies of these documents have been submitted to the majority and minority chairpersons of the House and Senate Agriculture and Rural Affairs Committees and to the Legislative Reference Bureau on this date.

The proposed regulation will be published in the February 5, 2000 edition of the *Pennsylvania Bulletin*. If I may be of further information, please advise.

Incerel Assistant Counsel

Enclosures

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

		SHEET FOR REGULAT REGULATORY REVIE	IONS SUBJECT TO THE WACT RECEIVED	
I.D. NUMBER	.: 2-117		2000 JAN 24 PH 3: 06	
SUBJECT:	Noxious Weeds		REVIEW CONTINUENTORY	
AGENCY:	DEPARTMENT O	OF AGRICULTURE		
х	Proposed Regulation	TYPE OF REGULATION	Ν	
	Final Regulation			
	Final Regulation with Noti	ice of Proposed Rulemakin	g Omitted	
	120-day Emergency Certif	fication of the Attorney Ger	neral	
	120-day Emergency Certif	fication of the Governor		
	Delivery of Tolled Regular a. With Revis		Without Revisions	
	F	ILING OF REGULATIO	)N	
DATE	SIGNATURE	DESIGNATION		
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1/24/10 Tri	cin Castelli	SENATE COMMITT AFFAIRS	EE ON AGRICULTURE & RURAL	
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ATTORNEY GENERAL

LEGISLATIVE REFERENCE BUREAU

January 18, 2000

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