

- e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

July 20, 2006

- f. Name, title, address and phone/fax/e-mail numbers of agency person(s) to receive all *written correspondence* regarding this rule: (Please type)

Gary W. Gibson, Director or Sherri E. Hutchinson, Assistant Director
Plant Industries Division
West Virginia Department of Agriculture
1900 Kanawha Boulevard, East
Charleston, WV 25305

Telephone: (304) 558-2212 Fax: (304) 558-2435
Email: ggibson@aq.state.wv.us or shutch@aq.state.wv.us

- g. **IF DIFFERENT FROM ITEM 'f'**, please give Name, title, address and phone number(s) of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

- a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

N/A

b. Date of hearing or comment period:

N/A

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

N/A

d. Attach findings and determinations and reasons:

Attached N/A



State of West Virginia
DEPARTMENT OF AGRICULTURE
Gus R. Douglass, Commissioner

Janet L. Fisher
Deputy Commissioner

Steve Hannah
Deputy Commissioner

TITLE 61
SERIES 14A
RULES AND REGULATIONS DEALING WITH NOXIOUS WEEDS
BRIEF SUMMARY OF PROPOSED RULE

1. Adds the following plants to the list of noxious weeds: Purple Loosestrife (*Lythrum salicaria*), Mile-a-minute Weed (*Polygonum perfoliatum*), Japanese Knotweed (*P. cuspidatum*), Tree of Heaven (*Ailanthus altissima*), Japanese Stiltgrass (*Microstegium vimineum*), Tartarian Honeysuckle (*Lonicera tartarica*), Morrow's Honeysuckle (*L. morrowi*), and Poison Hemlock (*Conium maculatum*).
2. Declares Autumn Olive to be a noxious weed statewide rather than in just 23 counties.
3. Clarifies the term "drug producing plants" in Section 5.4 by specifying that narcotic drug producing plants are noxious weeds rather than any plant that is capable of producing a drug.
4. Adopts the Federal Noxious Weed List as an extension of the West Virginia Noxious Weed List.
5. Removes Section 6.1 to eliminate redundancy. The West Virginia Noxious Weed Act (Chapter 19-12D-7b) already addresses the movement of noxious weeds and requires a permit from the commissioner.



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TITLE 61
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RULES AND REGULATIONS DEALING WITH NOXIOUS WEEDS
STATEMENT OF CIRCUMSTANCES REQUIRING THIS RULE

The plants proposed to be added to the West Virginia Noxious Weed List through this rule are either detrimental to the State's agricultural interests or human health.

Adopting the list of Federal Noxious Weeds into the West Virginia Noxious Weed List will improve the ability of cooperating government agencies to identify and control noxious weeds that are detrimental to agriculture and human health.

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Rules and Regulations Dealing With Noxious Weeds

Type of Rule: Legislative Interpretive Procedural

Agency: WEST VIRGINIA DEPARTMENT OF AGRICULTURE

Address: Plant Industries Division
1900 Kanawha Blvd., East
Charleston, WV 25305-0191

Phone Number: 558-2212 Gary W. Gibson Email: ggibson@ag.state.wv.us

Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

None

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	Current Increase/Decrease (use "-")	Next Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0.00	0.00	0.00
Personal Services	0.00	0.00	0.00
Current Expenses	0.00	0.00	0.00
Repairs & Alterations	0.00	0.00	0.00
Assets	0.00	0.00	0.00
Other	0.00	0.00	0.00
2. Estimated Total Revenues	0.00	0.00	0.00

Rule Title: _____

Rule Title:

Rules and Regulations Dealing With Noxious Weeds

3. **Explanation of above estimates (including long-range effect):**
Please include any increase or decrease in fees in your estimated total revenues.

None

MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule would not have a fiscal impact, and/or any special issues not captured elsewhere on this form.

Current rule does not require any fees. Changes do not involve any fees, only addition of plants to listing of noxious weeds and clarification of plant description.

Date: 6-14-04

Signature of Agency Head or Authorized Representative

Sturkman

TITLE 61
LEGISLATIVE RULES
DEPARTMENT OF AGRICULTURE

FILED

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SERIES 14A
RULES AND REGULATIONS DEALING WITH NOXIOUS WEEDS
WEST VIRGINIA
SECRETARY OF STATE

§61-14A-1. General.

1.1. Scope. -- These Legislative regulations amend, repromulgate and recodify administrative regulations governing noxious weeds. They set forth definitions, cooperative suppression activities, prohibitions and declare certain weeds to be noxious.

1.2. Authority. -- W. Va. Code '19-12D-4.

1.3. Filing Date. --

1.4. Effective Date. --

§61-14A-2. Declaration of policy.

2.1. These regulations are promulgated to establish surveillance, suppression and control programs and to declare certain weeds noxious.

§61-14A-3. Definitions.

3.1. Cooperative suppression or control agreement means a written agreement entered into by the Commissioner and one or more other persons which defines the responsibilities of each party and may include, but not be limited to, suppression or control procedures and methods, cost sharing, tenure of agreement and conditions.

§61-14A-4. Cooperative suppression and control.

4.1. When it has been determined that an infestation of a noxious weed exists for which suppression and control activities are practical, the Commissioner may:

4.1.1. Declare a quarantine, if necessary;

4.1.2. Enter into cooperative suppression or control agreement with any person, or;

4.1.3. Proceed with suppression or control activities.

§61-14A-5. Declaration of noxious weeds.

5.1. Surveys have shown that the following plants are a detriment to agriculture in West Virginia and are hereby declared to be noxious weeds: Johnson Grass (*Sorghum halepense* L.); Plumeless Thistle (*Carduus acanthoides* L.); Curled Thistle (*C. crispus* L.); ~~and~~ Musk Thistle (*C. nutans* L.); Mile-a-minute (*Polygonum perfoliatum*); Japanese Knotweed (*P. cuspidatum*); Purple Loosestrife (*Lythrum salicaria*); Tree of Heaven

(Ailanthus altissima); Autumn Olive (Elaeagnus umbellata Thunb.); Japanese Stiltgrass (Microstegium vimineum); Tartarian Honeysuckle (Lonicera tartarica); Morrow's Honeysuckle (L. morrowi); and Poison Hemlock (Conium maculatum).

5.2. The plant known as Kudzu (*Pueraria thunbergiana* (S and Z) Benth.) is a detriment to agriculture in West Virginia and is hereby declared to be noxious, however, because Kudzu has a potential value as a forage crop, the Commissioner may issue a permit for its cultivation. Such permit shall be issued by the Commissioner upon application by a prospective grower who agrees to follow cropping practices prescribed by the Commissioner. Such cropping practices shall include, but not be limited to, measures to prevent the spread of Kudzu to road sides, rights-of-way or woodlands.

~~5.3. The plant known as Autumn Olive (*Elaeagnus umbellata* Thunb.) has become a detriment to agriculture in Barbour, Braxton, Cabell, Calhoun, Doddridge, Gilmer, Harrison, Jackson, Kanawha, Lewis, Marion, Mason, Monongalia, Pleasants, Putnam, Ritchie, Roane, Taylor, Tyler, Upshur, Wetzel, Wirt and Wood counties and is hereby declared to be a noxious weed in these counties.~~

~~5.3~~ 5.4. This section reserved for narcotic drug producing plants (as defined under Title 21, USC Section 802) other than those listed in the West Virginia Noxious Weed Act. (W. Va. Code '19-12D-7)

5.4 West Virginia will adopt the Federal Noxious Weed List as an extension of the West Virginia Noxious Weed list and species currently on or later added to, the Federal Noxious Weed List will be regulated by the West Virginia Noxious Weed Act.

~~§61-14A-6. Sale, use or distribution of noxious weed plants prohibited.~~

~~6.1. The sale, use or distribution of noxious weed plants, except as provided for in 5.2 is prohibited in accordance with W. Va. Code '19-12D-7.~~

Plant Protection
Act.
Commerce and
trade.
Exports and
imports.
7 USC 7701 note.
7 USC 7701.

TITLE IV—PLANT PROTECTION ACT

SEC. 401. SHORT TITLE.

This title may be cited as the "Plant Protection Act".

SEC. 402. FINDINGS.

Congress finds that—

(1) the detection, control, eradication, suppression, prevention, or retardation of the spread of plant pests or noxious weeds is necessary for the protection of the agriculture, environment, and economy of the United States;

(2) biological control is often a desirable, low-risk means of ridding crops and other plants of plant pests and noxious weeds, and its use should be facilitated by the Department of Agriculture, other Federal agencies, and States whenever feasible;

(3) it is the responsibility of the Secretary to facilitate exports, imports, and interstate commerce in agricultural products and other commodities that pose a risk of harboring plant pests or noxious weeds in ways that will reduce, to the extent practicable, as determined by the Secretary, the risk of dissemination of plant pests or noxious weeds;

(4) decisions affecting imports, exports, and interstate movement of products regulated under this title shall be based on sound science;

(5) the smooth movement of enterable plants, plant products, biological control organisms, or other articles into, out of, or within the United States is vital to the United State's economy and should be facilitated to the extent possible;

(6) export markets could be severely impacted by the introduction or spread of plant pests or noxious weeds into or within the United States;

(7) the unregulated movement of plant pests, noxious weeds, plants, certain biological control organisms, plant products, and articles capable of harboring plant pests or noxious weeds could present an unacceptable risk of introducing or spreading plant pests or noxious weeds;

(8) the existence on any premises in the United States of a plant pest or noxious weed new to or not known to be widely prevalent in or distributed within and throughout the United States could constitute a threat to crops and other plants or plant products of the United States and burden interstate commerce or foreign commerce; and

(9) all plant pests, noxious weeds, plants, plant products, articles capable of harboring plant pests or noxious weeds regulated under this title are in or affect interstate commerce or foreign commerce.

7 USC 7702.

SEC. 403. DEFINITIONS.

In this title:

(1) **ARTICLE.**—The term "article" means any material or tangible object that could harbor plant pests or noxious weeds.

(2) **BIOLOGICAL CONTROL ORGANISM.**—The term "biological control organism" means any enemy, antagonist, or competitor used to control a plant pest or noxious weed.

(3) **ENTER AND ENTRY.**—The terms “enter” and “entry” mean to move into, or the act of movement into, the commerce of the United States.

(4) **EXPORT AND EXPORTATION.**—The terms “export” and “exportation” mean to move from, or the act of movement from, the United States to any place outside the United States.

(5) **IMPORT AND IMPORTATION.**—The terms “import” and “importation” mean to move into, or the act of movement into, the territorial limits of the United States.

(6) **INTERSTATE.**—The term “interstate” means—

(A) from one State into or through any other State;

or

(B) within the District of Columbia, Guam, the Virgin Islands of the United States, or any other territory or possession of the United States.

(7) **INTERSTATE COMMERCE.**—The term “interstate commerce” means trade, traffic, or other commerce—

(A) between a place in a State and a point in another State, or between points within the same State but through any place outside that State; or

(B) within the District of Columbia, Guam, the Virgin Islands of the United States, or any other territory or possession of the United States.

(8) **MEANS OF CONVEYANCE.**—The term “means of conveyance” means any personal property used for or intended for use for the movement of any other personal property.

(9) **MOVE AND RELATED TERMS.**—The terms “move”, “moving”, and “movement” mean—

(A) to carry, enter, import, mail, ship, or transport;

(B) to aid, abet, cause, or induce the carrying, entering, importing, mailing, shipping, or transporting;

(C) to offer to carry, enter, import, mail, ship, or transport;

(D) to receive to carry, enter, import, mail, ship, or transport;

(E) to release into the environment; or

(F) to allow any of the activities described in a preceding subparagraph.

(10) **NOXIOUS WEED.**—The term “noxious weed” means any plant or plant product that can directly or indirectly injure or cause damage to crops (including nursery stock or plant products), livestock, poultry, or other interests of agriculture, irrigation, navigation, the natural resources of the United States, the public health, or the environment.

(11) **PERMIT.**—The term “permit” means a written or oral authorization, including by electronic methods, by the Secretary to move plants, plant products, biological control organisms, plant pests, noxious weeds, or articles under conditions prescribed by the Secretary.

(12) **PERSON.**—The term “person” means any individual, partnership, corporation, association, joint venture, or other legal entity.

(13) **PLANT.**—The term “plant” means any plant (including any plant part) for or capable of propagation, including a tree, a tissue culture, a plantlet culture, pollen, a shrub, a vine, a cutting, a graft, a scion, a bud, a bulb, a root, and a seed.

(14) **PLANT PEST.**—The term “plant pest” means any living stage of any of the following that can directly or indirectly injure, cause damage to, or cause disease in any plant or plant product:

- (A) A protozoan.
- (B) A nonhuman animal.
- (C) A parasitic plant.
- (D) A bacterium.
- (E) A fungus.
- (F) A virus or viroid.
- (G) An infectious agent or other pathogen.

(H) Any article similar to or allied with any of the articles specified in the preceding subparagraphs.

(15) **PLANT PRODUCT.**—The term “plant product” means—

(A) any flower, fruit, vegetable, root, bulb, seed, or other plant part that is not included in the definition of plant; or

(B) any manufactured or processed plant or plant part.

(16) **SECRETARY.**—The term “Secretary” means the Secretary of Agriculture.

(17) **STATE.**—The term “State” means any of the several States of the United States, the Commonwealth of the Northern Mariana Islands, the Commonwealth of Puerto Rico, the District of Columbia, Guam, the Virgin Islands of the United States, or any other territory or possession of the United States.

(18) **SYSTEMS APPROACH.**—For the purposes of section 412(e), the term “systems approach” means a defined set of phytosanitary procedures, at least two of which have an independent effect in mitigating pest risk associated with the movement of commodities.

(19) **THIS TITLE.**—Except when used in this section, the term “this title” includes any regulation or order issued by the Secretary under the authority of this title.

(20) **UNITED STATES.**—The term “United States” means all of the States.

Subtitle A—Plant Protection

7 USC 7711.

SEC. 411. REGULATION OF MOVEMENT OF PLANT PESTS.

(a) **PROHIBITION OF UNAUTHORIZED MOVEMENT OF PLANT PESTS.**—Except as provided in subsection (c), no person shall import, enter, export, or move in interstate commerce any plant pest, unless the importation, entry, exportation, or movement is authorized under general or specific permit and is in accordance with such regulations as the Secretary may issue to prevent the introduction of plant pests into the United States or the dissemination of plant pests within the United States.

(b) **REQUIREMENTS FOR PROCESSES.**—The Secretary shall ensure that the processes used in developing regulations under subsection (a) governing consideration of import requests are based on sound science and are transparent and accessible.

(c) **AUTHORIZATION OF MOVEMENT OF PLANT PESTS BY REGULATION.**—

(1) **EXCEPTION TO PERMIT REQUIREMENT.**—The Secretary may issue regulations to allow the importation, entry, exportation, or movement in interstate commerce of specified plant

pests without further restriction if the Secretary finds that a permit under subsection (a) is not necessary.

(2) **PETITION TO ADD OR REMOVE PLANT PESTS FROM REGULATION.**—Any person may petition the Secretary to add a plant pest to, or remove a plant pest from, the regulations issued by the Secretary under paragraph (1).

(3) **RESPONSE TO PETITION BY THE SECRETARY.**—In the case of a petition submitted under paragraph (2), the Secretary shall act on the petition within a reasonable time and notify the petitioner of the final action the Secretary takes on the petition. The Secretary's determination on the petition shall be based on sound science.

(d) **PROHIBITION OF UNAUTHORIZED MAILING OF PLANT PESTS.**—

(1) **IN GENERAL.**—Any letter, parcel, box, or other package containing any plant pest, whether sealed as letter-rate postal matter or not, is nonmailable and shall not knowingly be conveyed in the mail or delivered from any post office or by any mail carrier, unless the letter, parcel, box, or other package is mailed in compliance with such regulations as the Secretary may issue to prevent the dissemination of plant pests into the United States or interstate.

(2) **APPLICATION OF POSTAL LAWS AND REGULATIONS.**—Nothing in this subsection authorizes any person to open any mailed letter or other mailed sealed matter except in accordance with the postal laws and regulations.

(e) **REGULATIONS.**—Regulations issued by the Secretary to implement subsections (a), (c), and (d) may include provisions requiring that any plant pest imported, entered, to be exported, moved in interstate commerce, mailed, or delivered from any post office—

(1) be accompanied by a permit issued by the Secretary prior to the importation, entry, exportation, movement in interstate commerce, mailing, or delivery of the plant pest;

(2) be accompanied by a certificate of inspection issued (in a manner and form required by the Secretary) by appropriate officials of the country or State from which the plant pest is to be moved;

(3) be raised under post-entry quarantine conditions by or under the supervision of the Secretary for the purposes of determining whether the plant pest—

(A) may be infested with other plant pests;

(B) may pose a significant risk of causing injury to, damage to, or disease in any plant or plant product; or

(C) may be a noxious weed; and

(4) be subject to remedial measures the Secretary determines to be necessary to prevent the spread of plant pests.

SEC. 412. REGULATION OF MOVEMENT OF PLANTS, PLANT PRODUCTS, BIOLOGICAL CONTROL ORGANISMS, NOXIOUS WEEDS, ARTICLES, AND MEANS OF CONVEYANCE.

7 USC 7712.

(a) **IN GENERAL.**—The Secretary may prohibit or restrict the importation, entry, exportation, or movement in interstate commerce of any plant, plant product, biological control organism, noxious weed, article, or means of conveyance, if the Secretary determines that the prohibition or restriction is necessary to prevent the introduction into the United States or the dissemination of a plant pest or noxious weed within the United States.

(b) **POLICY.**—The Secretary shall ensure that processes used in developing regulations under this section governing consideration of import requests are based on sound science and are transparent and accessible.

(c) **REGULATIONS.**—The Secretary may issue regulations to implement subsection (a), including regulations requiring that any plant, plant product, biological control organism, noxious weed, article, or means of conveyance imported, entered, to be exported, or moved in interstate commerce—

(1) be accompanied by a permit issued by the Secretary prior to the importation, entry, exportation, or movement in interstate commerce;

(2) be accompanied by a certificate of inspection issued (in a manner and form required by the Secretary) by appropriate officials of the country or State from which the plant, plant product, biological control organism, noxious weed, article, or means of conveyance is to be moved;

(3) be subject to remedial measures the Secretary determines to be necessary to prevent the spread of plant pests or noxious weeds; and

(4) with respect to plants or biological control organisms, be grown or handled under post-entry quarantine conditions by or under the supervision of the Secretary for the purposes of determining whether the plant or biological control organism may be infested with plant pests or may be a plant pest or noxious weed.

(d) **NOTICE.**—Not later than 1 year after the date of the enactment of this Act, the Secretary shall publish for public comment a notice describing the procedures and standards that govern the consideration of import requests. The notice shall—

(1) specify how public input will be sought in advance of and during the process of promulgating regulations necessitating a risk assessment in order to ensure a fully transparent and publicly accessible process; and

(2) include consideration of the following:

(A) Public announcement of import requests that will necessitate a risk assessment.

(B) A process for assigning major/nonroutine or minor/routine status to such requests based on current state of supporting scientific information.

(C) A process for assigning priority to requests.

(D) Guidelines for seeking relevant scientific and economic information in advance of initiating informal rule-making.

(E) Guidelines for ensuring availability and transparency of assumptions and uncertainties in the risk assessment process including applicable risk mitigation measures relied upon individually or as components of a system of mitigative measures proposed consistent with the purposes of this title.

(e) **STUDY AND REPORT ON SYSTEMS APPROACH.**—

(1) **STUDY.**—The Secretary shall conduct a study of the role for and application of systems approaches designed to guard against the introduction of plant pathogens into the United States associated with proposals to import plants or plant products into the United States.

Deadline.
Publication.
Public
information.

(2) **PARTICIPATION BY SCIENTISTS.**—In conducting the study the Secretary shall ensure participation by scientists from State departments of agriculture, colleges and universities, the private sector, and the Agricultural Research Service.

(3) **REPORT.**—Not later than 2 years after the date of the enactment of this Act, the Secretary shall submit a report on the results of the study conducted under this section to the Committee on Agriculture, Nutrition, and Forestry of the Senate and the Committee on Agriculture of the House of Representatives.

Deadline.

(f) **NOXIOUS WEEDS.**—

(1) **REGULATIONS.**—In the case of noxious weeds, the Secretary may publish, by regulation, a list of noxious weeds that are prohibited or restricted from entering the United States or that are subject to restrictions on interstate movement within the United States.

(2) **PETITION TO ADD OR REMOVE PLANTS FROM REGULATION.**—Any person may petition the Secretary to add a plant species to, or remove a plant species from, the regulations issued by the Secretary under this subsection.

(3) **DUTIES OF THE SECRETARY.**—In the case of a petition submitted under paragraph (2), the Secretary shall act on the petition within a reasonable time and notify the petitioner of the final action the Secretary takes on the petition. The Secretary's determination on the petition shall be based on sound science.

(g) **BIOLOGICAL CONTROL ORGANISMS.**—

(1) **REGULATIONS.**—In the case of biological control organisms, the Secretary may publish, by regulation, a list of organisms whose movement in interstate commerce is not prohibited or restricted. Any listing may take into account distinctions between organisms such as indigenous, nonindigenous, newly introduced, or commercially raised.

(2) **PETITION TO ADD OR REMOVE BIOLOGICAL CONTROL ORGANISMS FROM THE REGULATIONS.**—Any person may petition the Secretary to add a biological control organism to, or remove a biological control organism from, the regulations issued by the Secretary under this subsection.

(3) **DUTIES OF THE SECRETARY.**—In the case of a petition submitted under paragraph (2), the Secretary shall act on the petition within a reasonable time and notify the petitioner of the final action the Secretary takes on the petition. The Secretary's determination on the petition shall be based on sound science.

SEC. 413. NOTIFICATION AND HOLDING REQUIREMENTS UPON ARRIVAL 7 USC 7713.

(a) **DUTY OF SECRETARY OF THE TREASURY.**—

(1) **NOTIFICATION.**—The Secretary of the Treasury shall promptly notify the Secretary of Agriculture of the arrival of any plant, plant product, biological control organism, plant pest, or noxious weed at a port of entry.

(2) **HOLDING.**—The Secretary of the Treasury shall hold a plant, plant product, biological control organism, plant pest, or noxious weed for which notification is made under paragraph (1) at the port of entry until the plant, plant product, biological control organism, plant pest, or noxious weed—

(A) is inspected and authorized for entry into or transit movement through the United States; or

(B) is otherwise released by the Secretary of Agriculture.

(3) **EXCEPTIONS.**—Paragraphs (1) and (2) shall not apply to any plant, plant product, biological control organism, plant pest, or noxious weed that is imported from a country or region of a country designated by the Secretary of Agriculture, pursuant to regulations, as exempt from the requirements of such paragraphs.

(b) **DUTY OF RESPONSIBLE PARTIES.**—

(1) **NOTIFICATION.**—The person responsible for any plant, plant product, biological control organism, plant pest, noxious weed, article, or means of conveyance required to have a permit under section 411 or 412 shall provide the notification described in paragraph (3) as soon as possible after the arrival of the plant, plant product, biological control organism, plant pest, noxious weed, article, or means of conveyance at a port of entry and before the plant, plant product, biological control organism, plant pest, noxious weed, article, or means of conveyance is moved from the port of entry.

(2) **SUBMISSION.**—The notification shall be provided to the Secretary, or, at the Secretary's direction, to the proper official of the State to which the plant, plant product, biological control organism, plant pest, noxious weed, article, or means of conveyance is destined, or both, as the Secretary may prescribe.

(3) **ELEMENTS OF NOTIFICATION.**—The notification shall consist of the following:

(A) The name and address of the consignee.

(B) The nature and quantity of the plant, plant product, biological control organism, plant pest, noxious weed, article, or means of conveyance proposed to be moved.

(C) The country and locality where the plant, plant product, biological control organism, plant pest, noxious weed, article, or means of conveyance was grown, produced, or located.

(c) **PROHIBITION ON MOVEMENT OF ITEMS WITHOUT AUTHORIZATION.**—No person shall move from a port of entry or interstate any imported plant, plant product, biological control organism, plant pest, noxious weed, article, or means of conveyance unless the imported plant, plant product, biological control organism, plant pest, noxious weed, article, or means of conveyance—

(1) is inspected and authorized for entry into or transit movement through the United States; or

(2) is otherwise released by the Secretary.

7 USC 7714.

SEC. 414. GENERAL REMEDIAL MEASURES FOR NEW PLANT PESTS AND NOXIOUS WEEDS.

(a) **AUTHORITY TO HOLD, TREAT, OR DESTROY ITEMS.**—If the Secretary considers it necessary in order to prevent the dissemination of a plant pest or noxious weed that is new to or not known to be widely prevalent or distributed within and throughout the United States, the Secretary may hold, seize, quarantine, treat, apply other remedial measures to, destroy, or otherwise dispose of any plant, plant pest, noxious weed, biological control organism, plant product, article, or means of conveyance that—

(1) is moving into or through the United States or interstate, or has moved into or through the United States or interstate, and—

(A) the Secretary has reason to believe is a plant pest or noxious weed or is infested with a plant pest or noxious weed at the time of the movement; or

(B) is or has been otherwise in violation of this title; (2) has not been maintained in compliance with a post-entry quarantine requirement; or

(3) is the progeny of any plant, biological control organism, plant product, plant pest, or noxious weed that is moving into or through the United States or interstate, or has moved into the United States or interstate, in violation of this title.

(b) **AUTHORITY TO ORDER AN OWNER TO TREAT OR DESTROY.**—

(1) **IN GENERAL.**—The Secretary may order the owner of any plant, biological control organism, plant product, plant pest, noxious weed, article, or means of conveyance subject to action under subsection (a), or the owner's agent, to treat, apply other remedial measures to, destroy, or otherwise dispose of the plant, biological control organism, plant product, plant pest, noxious weed, article, or means of conveyance, without cost to the Federal Government and in the manner the Secretary considers appropriate.

(2) **FAILURE TO COMPLY.**—If the owner or agent of the owner fails to comply with the Secretary's order under this subsection, the Secretary may take an action authorized by subsection (a) and recover from the owner or agent of the owner the costs of any care, handling, application of remedial measures, or disposal incurred by the Secretary in connection with actions taken under subsection (a).

(c) **CLASSIFICATION SYSTEM.**—

(1) **DEVELOPMENT REQUIRED.**—To facilitate control of noxious weeds, the Secretary may develop a classification system to describe the status and action levels for noxious weeds. The classification system may include the current geographic distribution, relative threat, and actions initiated to prevent introduction or distribution.

(2) **MANAGEMENT PLANS.**—In conjunction with the classification system, the Secretary may develop integrated management plans for noxious weeds for the geographic region or ecological range where the noxious weed is found in the United States.

(d) **APPLICATION OF LEAST DRASTIC ACTION.**—No plant, biological control organism, plant product, plant pest, noxious weed, article, or means of conveyance shall be destroyed, exported, or returned to the shipping point of origin, or ordered to be destroyed, exported, or returned to the shipping point of origin under this section unless, in the opinion of the Secretary, there is no less drastic action that is feasible and that would be adequate to prevent the dissemination of any plant pest or noxious weed new to or not known to be widely prevalent or distributed within and throughout the United States.

SEC. 415. DECLARATION OF EXTRAORDINARY EMERGENCY AND RESULTING AUTHORITIES.

7 USC 7715.

(a) **AUTHORITY TO DECLARE.**—If the Secretary determines that an extraordinary emergency exists because of the presence of a

plant pest or noxious weed that is new to or not known to be widely prevalent in or distributed within and throughout the United States and that the presence of the plant pest or noxious weed threatens plants or plant products of the United States, the Secretary may—

(1) hold, seize, quarantine, treat, apply other remedial measures to, destroy, or otherwise dispose of, any plant, biological control organism, plant product, article, or means of conveyance that the Secretary has reason to believe is infested with the plant pest or noxious weed;

(2) quarantine, treat, or apply other remedial measures to any premises, including any plants, biological control organisms, plant products, articles, or means of conveyance on the premises, that the Secretary has reason to believe is infested with the plant pest or noxious weed;

(3) quarantine any State or portion of a State in which the Secretary finds the plant pest or noxious weed or any plant, biological control organism, plant product, article, or means of conveyance that the Secretary has reason to believe is infested with the plant pest or noxious weed; and

(4) prohibit or restrict the movement within a State of any plant, biological control organism, plant product, article, or means of conveyance when the Secretary determines that the prohibition or restriction is necessary to prevent the dissemination of the plant pest or noxious weed or to eradicate the plant pest or noxious weed.

(b) **REQUIRED FINDING OF EMERGENCY.**—The Secretary may take action under this section only upon finding, after review and consultation with the Governor or other appropriate official of the State affected, that the measures being taken by the State are inadequate to eradicate the plant pest or noxious weed.

(c) **NOTIFICATION PROCEDURES.**—

(1) **IN GENERAL.**—Except as provided in paragraph (2), before any action is taken in any State under this section, the Secretary shall notify the Governor or other appropriate official of the State affected, issue a public announcement, and file for publication in the Federal Register a statement of—

(A) the Secretary's findings;

(B) the action the Secretary intends to take;

(C) the reasons for the intended action; and

(D) where practicable, an estimate of the anticipated duration of the extraordinary emergency.

(2) **TIME SENSITIVE ACTIONS.**—If it is not possible to file for publication in the Federal Register prior to taking action, the filing shall be made within a reasonable time, not to exceed 10 business days, after commencement of the action.

(d) **APPLICATION OF LEAST DRASTIC ACTION.**—No plant, biological control organism, plant product, plant pest, noxious weed, article, or means of conveyance shall be destroyed, exported, or returned to the shipping point of origin, or ordered to be destroyed, exported, or returned to the shipping point of origin under this section unless, in the opinion of the Secretary, there is no less drastic action that is feasible and that would be adequate to prevent the dissemination of any plant pest or noxious weed new to or not known to be widely prevalent or distributed within and throughout the United States.

Federal Register,
publication.

(e) **PAYMENT OF COMPENSATION.**—The Secretary may pay compensation to any person for economic losses incurred by the person as a result of action taken by the Secretary under this section. The determination by the Secretary of the amount of any compensation to be paid under this subsection shall be final and shall not be subject to judicial review.

SEC. 416. RECOVERY OF COMPENSATION FOR UNAUTHORIZED ACTIVITIES.

7 USC 7716.

(a) **RECOVERY ACTION.**—The owner of any plant, plant biological control organism, plant product, plant pest, noxious weed, article, or means of conveyance destroyed or otherwise disposed of by the Secretary under section 414 or 415 may bring an action against the United States to recover just compensation for the destruction or disposal of the plant, plant biological control organism, plant product, plant pest, noxious weed, article, or means of conveyance (not including compensation for loss due to delays incident to determining eligibility for importation, entry, exportation, movement in interstate commerce, or release into the environment), but only if the owner establishes that the destruction or disposal was not authorized under this title.

(b) **TIME FOR ACTION; LOCATION.**—An action under this section shall be brought not later than 1 year after the destruction or disposal of the plant, plant biological control organism, plant product, plant pest, noxious weed, article, or means of conveyance involved. The action may be brought in any United States district court where the owner is found, resides, transacts business, is licensed to do business, or is incorporated.

SEC. 417. CONTROL OF GRASSHOPPERS AND MORMON CRICKETS.

7 USC 7717.

(a) **IN GENERAL.**—Subject to the availability of funds pursuant to this section, the Secretary shall carry out a program to control grasshoppers and Mormon crickets on all Federal lands to protect rangeland.

(b) **TRANSFER AUTHORITY.**—

(1) **IN GENERAL.**—Subject to paragraph (3), upon the request of the Secretary of Agriculture, the Secretary of the Interior shall transfer to the Secretary of Agriculture, from any no-year appropriations, funds for the prevention, suppression, and control of actual or potential grasshopper and Mormon cricket outbreaks on Federal lands under the jurisdiction of the Secretary of the Interior. The transferred funds shall be available only for the payment of obligations incurred on such Federal lands.

(2) **TRANSFER REQUESTS.**—Requests for the transfer of funds pursuant to this subsection shall be made as promptly as possible by the Secretary.

(3) **LIMITATION.**—Funds transferred pursuant to this subsection may not be used by the Secretary until funds specifically appropriated to the Secretary for grasshopper control have been exhausted.

(4) **REPLENISHMENT OF TRANSFERRED FUNDS.**—Funds transferred pursuant to this subsection shall be replenished by supplemental or regular appropriations, which shall be requested as promptly as possible.

(c) **TREATMENT FOR GRASSHOPPERS AND MORMON CRICKETS.**—

(1) **IN GENERAL.**—Subject to the availability of funds pursuant to this section, on request of the administering agency

or the agriculture department of an affected State, the Secretary, to protect rangeland, shall immediately treat Federal, State, or private lands that are infested with grasshoppers or Mormon crickets at levels of economic infestation, unless the Secretary determines that delaying treatment will not cause greater economic damage to adjacent owners of rangeland.

(2) OTHER PROGRAMS.—In carrying out this section, the Secretary shall work in conjunction with other Federal, State, and private prevention, control, or suppression efforts to protect rangeland.

(d) FEDERAL COST SHARE OF TREATMENT.—

(1) CONTROL ON FEDERAL LANDS.—Out of funds made available or transferred under this section, the Secretary shall pay 100 percent of the cost of grasshopper or Mormon cricket control on Federal lands to protect rangeland.

(2) CONTROL ON STATE LANDS.—Out of funds made available under this section, the Secretary shall pay 50 percent of the cost of grasshopper or Mormon cricket control on State lands.

(3) CONTROL ON PRIVATE LANDS.—Out of funds made available under this section, the Secretary shall pay 33.3 percent of the cost of grasshopper or Mormon cricket control on private lands.

(e) TRAINING.—From appropriated funds made available or transferred by the Secretary of the Interior to the Secretary of Agriculture for such purposes, the Secretary of Agriculture shall provide adequate funding for a program to train personnel to accomplish effectively the objective of this section.

7 USC 7718.

SEC. 418. CERTIFICATION FOR EXPORTS.

The Secretary may certify as to the freedom of plants, plant products, or biological control organisms from plant pests or noxious weeds, or the exposure of plants, plant products, or biological control organisms to plant pests or noxious weeds, according to the phytosanitary or other requirements of the countries to which the plants, plant products, or biological control organisms may be exported.

Subtitle B—Inspection and Enforcement

7 USC 7731.

SEC. 421. INSPECTIONS, SEIZURES, AND WARRANTS.

(a) ROLE OF ATTORNEY GENERAL.—The activities authorized by this section shall be carried out consistent with guidelines approved by the Attorney General.

(b) WARRANTLESS INSPECTIONS.—The Secretary may stop and inspect, without a warrant, any person or means of conveyance moving—

(1) into the United States to determine whether the person or means of conveyance is carrying any plant, plant product, biological control organism, plant pest, noxious weed, or article subject to this title;

(2) in interstate commerce, upon probable cause to believe that the person or means of conveyance is carrying any plant, plant product, biological control organism, plant pest, noxious weed, or article subject to this title; and

(3) in intrastate commerce from or within any State, portion of a State, or premises quarantined as part of an extraordinary

emergency declared under section 415 upon probable cause to believe that the person or means of conveyance is carrying any plant, plant product, biological control organism, plant pest, noxious weed, or article regulated under that section or is moving subject to that section.

(c) INSPECTIONS WITH A WARRANT.—

(1) **GENERAL AUTHORITY.**—The Secretary may enter, with a warrant, any premises in the United States for the purpose of conducting investigations or making inspections and seizures under this title.

(2) **APPLICATION AND ISSUANCE OF A WARRANT.**—Upon proper oath or affirmation showing probable cause to believe that there is on certain premises any plant, plant product, biological control organism, plant pest, noxious weed, article, facility, or means of conveyance regulated under this title, a United States judge, a judge of a court of record in the United States, or a United States magistrate judge may, within the judge's or magistrate's jurisdiction, issue a warrant for the entry upon the premises to conduct any investigation or make any inspection or seizure under this title. The warrant may be applied for and executed by the Secretary or any United States Marshal.

SEC. 422. COLLECTION OF INFORMATION.

7 USC 7732.

The Secretary may gather and compile information and conduct any investigations the Secretary considers necessary for the administration and enforcement of this title.

SEC. 423. SUBPOENA AUTHORITY.

7 USC 7733.

(a) **AUTHORITY TO ISSUE.**—The Secretary shall have power to subpoena the attendance and testimony of any witness, and the production of all documentary evidence relating to the administration or enforcement of this title or any matter under investigation in connection with this title.

(b) **LOCATION OF PRODUCTION.**—The attendance of any witness and production of documentary evidence may be required from any place in the United States at any designated place of hearing.

(c) **ENFORCEMENT OF SUBPOENA.**—In the case of disobedience to a subpoena by any person, the Secretary may request the Attorney General to invoke the aid of any court of the United States within the jurisdiction in which the investigation is conducted, or where the person resides, is found, transacts business, is licensed to do business, or is incorporated, in requiring the attendance and testimony of any witness and the production of documentary evidence. In case of a refusal to obey a subpoena issued to any person, a court may order the person to appear before the Secretary and give evidence concerning the matter in question or to produce documentary evidence. Any failure to obey the court's order may be punished by the court as a contempt of the court.

(d) **COMPENSATION.**—Witnesses summoned by the Secretary shall be paid the same fees and mileage that are paid to witnesses in courts of the United States, and witnesses whose depositions are taken and the persons taking the depositions shall be entitled to the same fees that are paid for similar services in the courts of the United States.

(e) **PROCEDURES.**—The Secretary shall publish procedures for the issuance of subpoenas under this section. Such procedures shall

Publication.

include a requirement that subpoenas be reviewed for legal sufficiency and signed by the Secretary. If the authority to sign a subpoena is delegated, the agency receiving the delegation shall seek review for legal sufficiency outside that agency.

(f) SCOPE OF SUBPOENA.—Subpoenas for witnesses to attend court in any judicial district or to testify or produce evidence at an administrative hearing in any judicial district in any action or proceeding arising under this title may run to any other judicial district.

7 USC 7734.

SEC. 424. PENALTIES FOR VIOLATION.

(a) CRIMINAL PENALTIES.—Any person that knowingly violates this title, or that knowingly forges, counterfeits, or, without authority from the Secretary, uses, alters, defaces, or destroys any certificate, permit, or other document provided for in this title shall be guilty of a misdemeanor, and, upon conviction, shall be fined in accordance with title 18, United States Code, imprisoned for a period not exceeding 1 year, or both.

(b) CIVIL PENALTIES.—

(1) IN GENERAL.—Any person that violates this title, or that forges, counterfeits, or, without authority from the Secretary, uses, alters, defaces, or destroys any certificate, permit, or other document provided for in this title may, after notice and opportunity for a hearing on the record, be assessed a civil penalty by the Secretary that does not exceed the greater of—

(A) \$50,000 in the case of any individual (except that the civil penalty may not exceed \$1,000 in the case of an initial violation of this title by an individual moving regulated articles not for monetary gain), \$250,000 in the case of any other person for each violation, and \$500,000 for all violations adjudicated in a single proceeding; or

(B) twice the gross gain or gross loss for any violation, forgery, counterfeiting, unauthorized use, defacing, or destruction of a certificate, permit, or other document provided for in this title that results in the person deriving pecuniary gain or causing pecuniary loss to another.

(2) FACTORS IN DETERMINING CIVIL PENALTY.—In determining the amount of a civil penalty, the Secretary shall take into account the nature, circumstance, extent, and gravity of the violation or violations and the Secretary may consider, with respect to the violator—

(A) ability to pay;

(B) effect on ability to continue to do business;

(C) any history of prior violations;

(D) the degree of culpability; and

(E) any other factors the Secretary considers appropriate.

(3) SETTLEMENT OF CIVIL PENALTIES.—The Secretary may compromise, modify, or remit, with or without conditions, any civil penalty that may be assessed under this subsection.

(4) FINALITY OF ORDERS.—The order of the Secretary assessing a civil penalty shall be treated as a final order reviewable under chapter 158 of title 28, United States Code. The validity of the Secretary's order may not be reviewed in an action to collect the civil penalty. Any civil penalty not paid in full when due under an order assessing the civil penalty

shall thereafter accrue interest until paid at the rate of interest applicable to civil judgments of the courts of the United States.

(c) **LIABILITY FOR ACTS OF AN AGENT.**—When construing and enforcing this title, the act, omission, or failure of any officer, agent, or person acting for or employed by any other person within the scope of his or her employment or office, shall be deemed also to be the act, omission, or failure of the other person.

(d) **GUIDELINES FOR CIVIL PENALTIES.**—The Secretary shall coordinate with the Attorney General to establish guidelines to determine under what circumstances the Secretary may issue a civil penalty or suitable notice of warning in lieu of prosecution by the Attorney General of a violation of this title.

SEC. 425. ENFORCEMENT ACTIONS OF ATTORNEY GENERAL.

7 USC 7735.

The Attorney General may—

(1) prosecute, in the name of the United States, all criminal violations of this title that are referred to the Attorney General by the Secretary or are brought to the notice of the Attorney General by any person;

(2) bring an action to enjoin the violation of or to compel compliance with this title, or to enjoin any interference by any person with the Secretary in carrying out this title, whenever the Secretary has reason to believe that the person has violated, or is about to violate this title, or has interfered, or is about to interfere, with the Secretary; and

(3) bring an action for the recovery of any unpaid civil penalty, funds under reimbursable agreements, late payment penalty, or interest assessed under this title.

SEC. 426. COURT JURISDICTION.

7 USC 7736.

(a) **IN GENERAL.**—The United States district courts, the District Court of Guam, the District Court of the Virgin Islands, the highest court of American Samoa, and the United States courts of other territories and possessions are vested with jurisdiction in all cases arising under this title. Any action arising under this title may be brought, and process may be served, in the judicial district where a violation or interference occurred or is about to occur, or where the person charged with the violation, interference, impending violation, impending interference, or failure to pay resides, is found, transacts business, is licensed to do business, or is incorporated.

(b) **EXCEPTION.**—This section does not apply to the imposition of civil penalties under section 424(b).

Subtitle C—Miscellaneous Provisions

SEC. 431. COOPERATION.

7 USC 7751.

(a) **IN GENERAL.**—The Secretary may cooperate with other Federal agencies or entities, States or political subdivisions of States, national governments, local governments of other nations, domestic or international organizations, domestic or international associations, and other persons to carry out this title.

(b) **RESPONSIBILITY.**—The individual or entity cooperating with the Secretary under subsection (a) shall be responsible for—

(1) the authority necessary to conduct the operations or take measures on all land and properties within the foreign

country or State, other than those owned or controlled by the United States; and

(2) other facilities and means as the Secretary determines necessary.

(c) **TRANSFER OF BIOLOGICAL CONTROL METHODS.**—The Secretary may transfer to a State, Federal agency, or other person biological control methods using biological control organisms against plant pests or noxious weeds.

(d) **COOPERATION IN PROGRAM ADMINISTRATION.**—The Secretary may cooperate with State authorities or other persons in the administration of programs for the improvement of plants, plant products, and biological control organisms.

(e) **PHYTOSANITARY ISSUES.**—The Secretary shall ensure that phytosanitary issues involving imports and exports are addressed based on sound science and consistent with applicable international agreements. To accomplish these goals, the Secretary may—

(1) conduct direct negotiations with plant health officials or other appropriate officials of other countries;

(2) provide technical assistance, training, and guidance to any country requesting such assistance in the development of agricultural health protection systems and import/export systems; and

(3) maintain plant health and quarantine expertise in other countries—

(A) to facilitate the establishment of phytosanitary systems and the resolution of phytosanitary issues;

(B) to assist those countries with agricultural health protection activities; and

(C) to provide general liaison on agricultural health issues with the plant health or other appropriate officials of the country.

7 USC 7752.

SEC. 432. BUILDINGS, LAND, PEOPLE, CLAIMS, AND AGREEMENTS.

(a) **IN GENERAL.**—To the extent necessary to carry out this title, the Secretary may acquire and maintain all real or personal property for special purposes and employ any persons, make grants, and enter into any contracts, cooperative agreements, memoranda of understanding, or other agreements.

(b) **TORT CLAIMS.**—

(1) **IN GENERAL.**—Except as provided in paragraph (2), the Secretary may pay tort claims in the manner authorized in the first paragraph of section 2672 of title 28, United States Code, when the claims arise outside the United States in connection with activities that are authorized under this title.

(2) **REQUIREMENTS OF CLAIM.**—A claim may not be allowed under this subsection unless the claim is presented in writing to the Secretary within 2 years after the date on which the claim accrues.

7 USC 7753.

SEC. 433. REIMBURSABLE AGREEMENTS.

(a) **AUTHORITY TO ENTER INTO AGREEMENTS.**—The Secretary may enter into reimbursable fee agreements with persons for preclearance of plants, plant products, biological control organisms, and articles at locations outside the United States for movement into the United States.

(b) **FUNDS COLLECTED FOR PRECLEARANCE.**—Funds collected for preclearance shall be credited to accounts which may be established by the Secretary for this purpose and shall remain available

until expended for the preclearance activities without fiscal year limitation.

(c) PAYMENT OF EMPLOYEES.—

(1) IN GENERAL.—Notwithstanding any other law, the Secretary may pay employees of the Department of Agriculture performing services relating to imports into and exports from the United States, for all overtime, night, or holiday work performed by them, at rates of pay established by the Secretary.

(2) REIMBURSEMENT OF THE SECRETARY.—

(A) IN GENERAL.—The Secretary may require persons for whom the services are performed to reimburse the Secretary for any sums of money paid by the Secretary for the services.

(B) USE OF FUNDS.—All funds collected under this paragraph shall be credited to the account that incurs the costs and shall remain available until expended without fiscal year limitation.

(d) LATE PAYMENT PENALTIES.—

(1) COLLECTION.—Upon failure to reimburse the Secretary in accordance with this section, the Secretary may assess a late payment penalty, and the overdue funds shall accrue interest, as required by section 3717 of title 31, United States Code.

(2) USE OF FUNDS.—Any late payment penalty and any accrued interest shall be credited to the account that incurs the costs and shall remain available until expended without fiscal year limitation.

SEC. 434. REGULATIONS AND ORDERS.

7 USC 7754.

The Secretary may issue such regulations and orders as the Secretary considers necessary to carry out this title.

SEC. 435. PROTECTION FOR MAIL HANDLERS.

7 USC 7755.

This title shall not apply to any employee of the United States in the performance of the duties of the employee in handling the mail.

SEC. 436. PREEMPTION.

7 USC 7756.

(a) REGULATION OF FOREIGN COMMERCE.—No State or political subdivision of a State may regulate in foreign commerce any article, means of conveyance, plant, biological control organism, plant pest, noxious weed, or plant product in order—

(1) to control a plant pest or noxious weed;

(2) to eradicate a plant pest or noxious weed; or

(3) prevent the introduction or dissemination of a biological control organism, plant pest, or noxious weed.

(b) REGULATION OF INTERSTATE COMMERCE.—

(1) IN GENERAL.—Except as provided in paragraph (2), no State or political subdivision of a State may regulate the movement in interstate commerce of any article, means of conveyance, plant, biological control organism, plant pest, noxious weed, or plant product in order to control a plant pest or noxious weed, eradicate a plant pest or noxious weed, or prevent the introduction or dissemination of a biological control organism, plant pest, or noxious weed, if the Secretary has issued a regulation or order to prevent the dissemination of the biological control organism, plant pest, or noxious weed within the United States.

(2) EXCEPTIONS.—

(A) REGULATIONS CONSISTENT WITH FEDERAL REGULATIONS.—A State or a political subdivision of a State may impose prohibitions or restrictions upon the movement in interstate commerce of articles, means of conveyance, plants, biological control organisms, plant pests, noxious weeds, or plant products that are consistent with and do not exceed the regulations or orders issued by the Secretary.

(B) SPECIAL NEED.—A State or political subdivision of a State may impose prohibitions or restrictions upon the movement in interstate commerce of articles, means of conveyance, plants, plant products, biological control organisms, plant pests, or noxious weeds that are in addition to the prohibitions or restrictions imposed by the Secretary, if the State or political subdivision of a State demonstrates to the Secretary and the Secretary finds that there is a special need for additional prohibitions or restrictions based on sound scientific data or a thorough risk assessment.

7 USC 7757.

SEC. 437. SEVERABILITY.

If any provision of this title or application of any provision of this title to any person or circumstances is held invalid, the remainder of this title and the application of the provision to other persons and circumstances shall not be affected by the invalidity.

7 USC 7758.

SEC. 438. REPEAL OF SUPERSEDED LAWS.

(a) REPEAL.—The following provisions of law are repealed:

(1) The Act of August 20, 1912 (commonly known as the "Plant Quarantine Act") (7 U.S.C. 151-164a, 167).

(2) The Federal Plant Pest Act (7 U.S.C. 150aa et seq. and 7 U.S.C. 147a note).

(3) Subsections (a) through (e) of section 102 of the Department of Agriculture Organic Act of 1944 (7 U.S.C. 147a).

(4) The Federal Noxious Weed Act of 1974 (7 U.S.C. 2801 et seq.), except the first section and section 15 of that Act (7 U.S.C. 2801 note and 7 U.S.C. 2814).

(5) The Act of January 31, 1942 (commonly known as the "Mexican Border Act") (7 U.S.C. 149).

(6) The Joint Resolution of April 6, 1937 (commonly known as the "Insect Control Act") (7 U.S.C. 148 et seq.).

(7) The Halogeton Glomeratus Act (7 U.S.C. 1651 et seq.).

(8) The Golden Nematode Act (7 U.S.C. 150 et seq.).

(9) Section 1773 of the Food Security Act of 1985 (Public Law 99-198; 7 U.S.C. 148f).

(b) EMERGENCY TRANSFER AUTHORITY REGARDING PLANT PESTS.—The first section of Public Law 97-46 (7 U.S.C. 147b) is amended—

(1) by striking "plant pests or"; and

(2) by striking "section 102 of the Act of September 21, 1944, as amended (7 U.S.C. 147a), and".

(c) EFFECT ON REGULATIONS.—Regulations issued under the authority of a provision of law repealed by subsection (a) shall remain in effect until such time as the Secretary issues a regulation under section 434 that supersedes the earlier regulation.

Subtitle D—Authorization of Appropriations

SEC. 441. AUTHORIZATION OF APPROPRIATIONS.

7 USC 7771.

There are authorized to be appropriated such amounts as may be necessary to carry out this title. Except as specifically authorized by law, no part of the money appropriated under this section shall be used to pay indemnities for property injured or destroyed by or at the direction of the Secretary.

SEC. 442. TRANSFER AUTHORITY.

7 USC 7772.

(a) **AUTHORITY TO TRANSFER CERTAIN FUNDS.**—In connection with an emergency in which a plant pest or noxious weed threatens any segment of the agricultural production of the United States, the Secretary may transfer from other appropriations or funds available to the agencies or corporations of the Department of Agriculture such amounts as the Secretary considers necessary to be available in the emergency for the arrest, control, eradication, and prevention of the spread of the plant pest or noxious weed and for related expenses.

(b) **AVAILABILITY.**—Any funds transferred under this section shall remain available for such purposes without fiscal year limitation.

TITLE V—INSPECTION ANIMALS

SEC. 501. CIVIL PENALTY.

7 USC 2279e.

(a) **IN GENERAL.**—Any person that causes harm to, or interferes with, an animal used for the purposes of official inspections by the Department of Agriculture, may, after notice and opportunity for a hearing on the record, be assessed a civil penalty by the Secretary of Agriculture not to exceed \$10,000.

(b) **FACTORS IN DETERMINING CIVIL PENALTY.**—In determining the amount of a civil penalty, the Secretary shall take into account the nature, circumstance, extent, and gravity of the offense.

(c) **SETTLEMENT OF CIVIL PENALTIES.**—The Secretary may compromise, modify, or remit, with or without conditions, any civil penalty that may be assessed under this section.

(d) **FINALITY OF ORDERS.**—

(1) **IN GENERAL.**—The order of the Secretary assessing a civil penalty shall be treated as a final order reviewable under chapter 158 of title 28, United States Code. The validity of the order of the Secretary may not be reviewed in an action to collect the civil penalty.

(2) **INTEREST.**—Any civil penalty not paid in full when due under an order assessing the civil penalty shall thereafter accrue interest until paid at the rate of interest applicable to civil judgments of the courts of the United States.

SEC. 502. SUBPOENA AUTHORITY.

7 USC 2279f.

(a) **IN GENERAL.**—The Secretary shall have power to subpoena the attendance and testimony of any witness, and the production of all documentary evidence relating to the enforcement of section 501 or any matter under investigation in connection with this title.

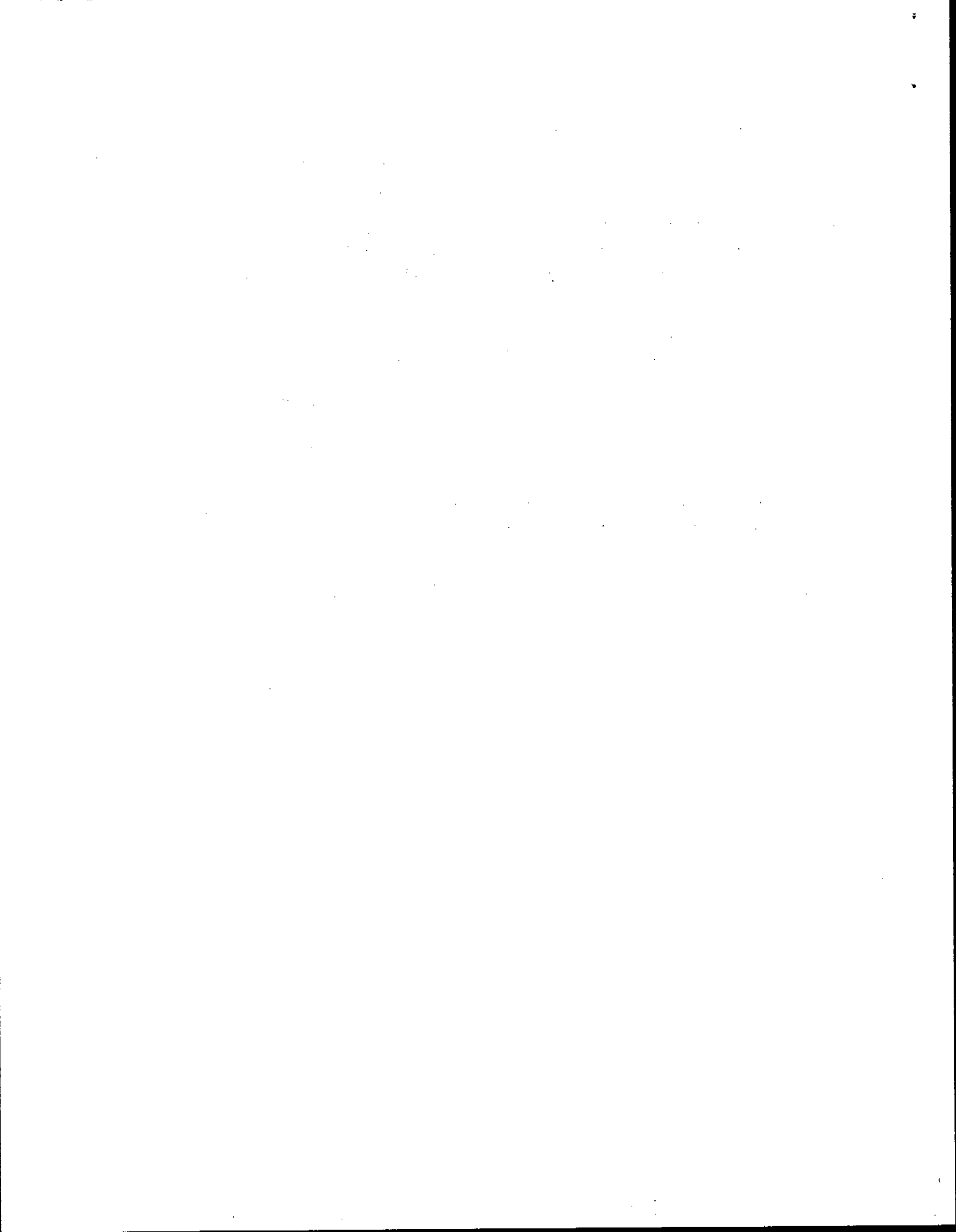
Amendment to the Federal Noxious Weed Act (Which remains in effect as a part of the new Plant Protection Act)

This amendment to the Federal Noxious Weed Act (FNWA), addressed "undesirable plants," which are defined such that they include, but are not limited to, the definition of noxious weeds. The FNWA amendments mandate that each Federal agency:

- Designate an office or person to develop and coordinate an undesirable plants management program for Federal lands under the agency's jurisdiction.
- Establish and fund an undesirable plants management program.
- Implement cooperative agreements with State agencies regarding the management of undesirable plant species.
- Establish integrated management systems to control or contain undesirable plant species targeted under cooperative agreements.

Click below for the full text of §2814 of 7 U.S.C. 360; the Federal Noxious Weed Act (FNWA), the only part of FNWA remaining in effect. This section is now incorporated into the Plant Protection Act.

<http://www.aphis.usda.gov/ppq/weeds/sec2814.PDF>



Federal Noxious Weed List (as of January 6, 2006)

Aquatic/Wetland

Azolla pinnata R. Brown (mosquito fern, water velvet)
Caulerpa taxifolia (Vahl) C. Agardh, Mediterranean strain (killer algae)
Eichornia azurea (Swartz) Kunth (anchored waterhyacinth, rooted waterhyacinth)
Hydrilla verticillata (Linnaeus f.) Royle (hydrilla)
Hygrophila polysperma T. Anderson (Miramar weed)
Ipomoea aquatica Forsskal (water-spinach, swamp morning-glory)
Lagarosiphon major (Ridley) Moss
Limnophila sessiliflora (Vahl) Blume (ambulia)
Melaleuca quinquenervia (Cav.) Blake (broadleaf paper bark tree).
Monochoria hastata (Linnaeus) Solms-Laubach
Monochoria vaginalis (Burman f.) C. Presl
Ottelia alismoides (L.) Pers.
Sagittaria sagittifolia Linnaeus (arrowhead)
Salvinia auriculata Aublet (giant salvinia)
Salvinia biloba Raddi (giant salvinia)
Salvinia herzogii de la Sota (giant salvinia)
Salvinia molesta D.S. Mitchell (giant salvinia)
Solanum tampicense Dunal (wetland nightshade)
Sparganium erectum Linnaeus (exotic bur-reed)

Parasitic

Aeginetia spp.

Alectra spp.

Cuscuta spp. (dodders), other than following species:

Cuscuta americana Linnaeus
Cuscuta appplanata Engelmann
Cuscuta approximata Babington
Cuscuta attenuata Waterfall
Cuscuta boldinghii Urban
Cuscuta brachycalyx (Yuncker) Yuncker
Cuscuta californica Hooker & Arnott
Cuscuta campestris Yuncker
Cuscuta cassytoides Nees ex Engelmann
Cuscuta ceanothii Behr
Cuscuta cephalanthii Engelmann
Cuscuta compacta Jussieu
Cuscuta corylii Engelmann
Cuscuta cuspidata Engelmann
Cuscuta decipiens Yuncker
Cuscuta dentatasquamata Yuncker
Cuscuta denticulata Engelmann

Cuscuta epilinum Weihe
Cuscuta epithymum (Linnaeus) Linnaeus
Cuscuta erosa Yuncker
Cuscuta europaea Linnaeus
Cuscuta exalta Engelman
Cuscuta fasciculata Yuncker
Cuscuta glabrior (Engelman) Yuncker
Cuscuta globulosa Bentham
Cuscuta glomerata Choisy
Cuscuta gronovii Willdenow
Cuscuta harperi Small
Cuscuta howelliana Rubtzoff
Cuscuta indecora Choisy
Cuscuta jepsonii Yuncker
Cuscuta leptantha Engelman
Cuscuta mitriformis Engelman
Cuscuta nevadensis I. M. Johnston
Cuscuta obtusiflora Humboldt, Bonpland, & Kunth
Cuscuta occidentalis Millspaugh ex Mill & Nuttall
Cuscuta odontolepis Engelman
Cuscuta pentagona Engelman
Cuscuta planiflora Tenore
Cuscuta plattensis A. Nelson
Cuscuta polygonorum Engelman
Cuscuta rostrata Shuttleworth ex Engelman
Cuscuta runyonii Yuncker
Cuscuta salina Engelman
Cuscuta sandwichiana Choisy
Cuscuta squamata Engelman
Cuscuta suaveolens Seringe
Cuscuta suksdorfii Yuncker
Cuscuta tuberculata Brandegee
Cuscuta umbellata Humboldt, Bonpland, & Kunth
Cuscuta umbrosa Beyrich ex Hooker
Cuscuta vetchii Brandegee
Cuscuta warneri Yuncker
Orobanche spp. (broomrapes), other than the following species:
Orobanche bulbosa (Gray) G. Beck
Orobanche californica Schlechtendal & Chamisso
Orobanche cooperi (Gray) Heller
Orobanche corymbosa (Rydberg) Ferris
Orobanche dugesii (S. Watson) Munz
Orobanche fasciculata Nuttall
Orobanche ludoviciana Nuttall
Orobanche multicaulis Brandegee
Orobanche parishii (Jepson) Heckard

Orobanche pinorum Geyer ex Hooker
Orobanche uniflora Linnaeus
Orobanche valida Jepson
Orobanche vallicola (Jepson) Heckard
Striga spp. (witchweeds)

Terrestrial

Ageratina adenophora (Sprengel) King & Robinson (crofton weed)
Alternanthera sessilis (Linnaeus) R. Brown ex de Candolle (sessile joyweed)
Asphodelus fistulosus Linnaeus (onionweed)
Avena sterilis Linnaeus (including *Avena ludoviciana* Durieu) (animated oat, wild oat)
Carthamus oxyacantha M. Bieberstein (wild safflower)
Chrysopogon aciculatus (Retzius) Trinius (pilipiliula)
Commelina benghalensis Linnaeus (Benghal dayflower)
Crupina vulgaris Cassini (common crupina)
Digitaria scalarum (Schweinfurth) Chiovenda (African couchgrass, fingergrass)
Digitaria velutina (Forsskal) Palisot de Beauvois (velvet fingergrass, annual conchgrass)
Drymaria arenarioides Humboldt & Bonpland ex Roemer & Schultes (lightning weed)
Emex australis Steinheil (three-cornered jack)
Emex spinosa (Linnaeus) Campdera (devil's thorn)
Galega officinalis Linnaeus (goatsrue)
Heracleum mantegazzianum Sommier & Levier (giant hogweed)
Homeria spp.
Imperata brasiliensis Trinius (Brazilian satintail)
Imperata cylindrica (Linnaeus) Raeuschel (cogongrass)
Ischaemum rugosum Salisbury (muraingrass)
Leptochloa chinensis (Linnaeus) Nees (Asian sprangletop)
Lycium ferocissimum Miers (African boxthorn)
Melastoma malabathricum Linnaeus
Mikania cordata (Burman f.) B. L. Robinson (mile-a-minute)
Mikania micrantha Humboldt, Bonpland, & Kunth
Mimosa invisa Martius (giant sensitive plant)
Mimosa pigra Linnaeus var. *pigra* (catclaw mimosa)
Nassella trichotoma (Nees) Hackel ex Arechavaleta (serrated tussock)
Opuntia aurantiaca Lindley (jointed prickly pear)
Oryza longistaminata A. Chevalier & Roehrich (red rice)
Oryza punctata Kotschy ex Steudel (red rice)
Oryza rufipogon Griffith (red rice)
Paspalum scrobiculatum Linnaeus (Kodo-millet)
Pennisetum clandestinum Hochstetter ex Chiovenda (kikuyugrass)
Pennisetum macrourum Trinius (African feathergrass)
Pennisetum pedicellatum Trinius (kyasumagrass)
Pennisetum polystachion (Linnaeus) Schultes (missiongrass, thin napiergrass)
Prosopis alata R. A. Philippi
Prosopis argentina Burkart

Prosopis articulata S. Watson
Prosopis burkartii Munoz
Prosopis caldenia Burkart
Prosopis calingastana Burkart
Prosopis campestris Grisebach
Prosopis castellanosi Burkart
Prosopis denudans Benth
Prosopis elata (Burkart) Burkart
Prosopis farcta (Solander ex Russell) Macbride
Prosopis ferox Grisebach
Prosopis fiebrigii Harms
Prosopis hassleri Harms
Prosopis humilis Gillies ex Hooker & Arnott
Prosopis kuntzei Harms
Prosopis pallida (Humboldt & Bonpland ex Willdenow) Humboldt, Bonpland, & Kunth
Prosopis palmeri S. Watson
Prosopis reptans Benth var. *reptans*
Prosopis rojasiana Burkart
Prosopis ruizlealii Burkart
Prosopis ruscifolia Grisebach
Prosopis sericantha Gillies ex Hooker & Arnott
Prosopis strombulifera (Lamarck) Benth
Prosopis torquata (Cavanilles ex Lagasca y Segura) de Candolle
Rottboellia cochinchinensis (Lour.) W. Clayton
Rubus fruticosus Linnaeus (complex) (wild blackberry)
Rubus moluccanus Linnaeus (wild raspberry)
Saccharum spontaneum Linnaeus (wild sugarcane)
Salsola vermiculata Linnaeus (wormleaf salsola)
Setaria pallide-fusca (Schumacher) Stapf & Hubbard (cattail grass)
Solanum torvum Swartz (turkeyberry)
Solanum viarum Dunal (tropical soda apple)
Spermacoce alata (Aublet) de Candolle
Tridax procumbens Linnaeus (coat buttons)
Urochloa panicoides Beauvois (liverseed grass)

Sherri Hutchinson

From: Donna I. Ford-Werntz [dford2@wvu.edu]
Sent: Wednesday, June 28, 2006 1:35 PM
To: shutch@ag.state.wv.us
Cc: ddick@ag.state.wv.us
Subject: WV Noxious Weed Act Amendment

Dear Ms. Hutchinson, I would like to support the proposal to add the five named species to the WV noxious weed list. This amendment to the WV Weed Act is long overdue, and the plants to be newly listed are certainly problematic for our state. Thanks to the Agriculture Commission for their wise action in this stead! (Please let me know if you need a hard copy of this letter). Sincerely,

Donna I. Ford-Werntz West Virginia Univ.

Herbarium Curator (WVA) Box 6057

Assoc. Prof. Biol. Morgantown, WV 26506

5230 Life Sciences 293-5201 X31549
email: dford2@wvu.edu fax: (304)293-6363

Web site at <http://www.as.wvu.edu/biology/>

Sherri Hutchinson

From: Sherri Hutchinson [shutchinson@ag.state.wv.us]
Sent: Monday, July 17, 2006 1:03 PM
To: 'Donna I. Ford-Wertz'
Subject: WV Noxious Weed Act Amendment

I want to thank you for your support of the proposed amendments to the WV Noxious Weed Act. We have reviewed the comments received during the public comment period and feel that your email is official as received. We don't need a hard copy as we have printed off the email for file purposes. Thanks again for your comments.

Sherri F. Hutchinson
Assistant Director
Agricultural Pest Survey Programs Unit
West Virginia Department of Agriculture
1900 Kanawha Blvd., East
Charleston, WV 25305-0191

Phone: (304) 558-2212
Fax: (304) 558-2435





west virginia department of environmental protection

Division of Mining and Reclamation
601 57th Street, S.E.
Charleston, WV 25304

Joe Manchin III, Governor
Stephanie R. Timmermeyer, Cabinet Secretary
www.wvdep.org

June 16, 2006

Gary W. Gibson, Director
Plant Industries Division
West Virginia Department of Agriculture
State Capitol
1900 Kanawha Boulevard, East
Charleston, WV 25305-0170

Dear Mr. Gibson,

Thank you for the opportunity to comment on the proposed amendment to the West Virginia Noxious Weed Act Rules (Title 61, Series 14A of the code of West Virginia). As the regulatory authority in West Virginia of the mining and reclamation process, this is an issue we deal with on a daily bases. We also have made recent rule changes to promote native and non-competitive species on forestland planting plans (38CSR2-7.6) and wildlife habitat planting plans (38CSR2-7.7). The purpose of these rule changes is to expedite natural invasion and succession, and improve productivity. We fully support the proposed amendment to add Autumn olive, mile-a-minute, purple loosestrife, tree of heaven and Japanese stiltgrass to the West Virginia noxious weed list. We also support your efforts to incorporate the Federal Noxious Weed List as an extension to the West Virginia Noxious Weed List.

Prior to our new forestland rules, approved in February 2005, wildlife habitat was a commonly used post mine land use. Autumn olive was a major component of these planting plans. Please note that many of these approved permits are still active and reclamation is forthcoming.

We appreciate your efforts to promote native species and curb the imbalance noxious and exotic species can impose.

Sincerely,

Randy Huffman, Director
Division of Mining and Reclamation



State of West Virginia
DEPARTMENT OF AGRICULTURE
Gus R. Douglass, Commissioner

Janet L. Fisher
Deputy Commissioner

Steve Hannah
Deputy Commissioner

6/23/2006

Randy Huffman, Director
Division of Mining and Reclamation
West Virginia Dept. of Environmental Protection
601 57th Street, S.E.
Charleston, WV 25304

Dear Mr. Huffman,

Thank you for your comments regarding the proposed amendments to the West Virginia Noxious Weed Act Rules. Since DEP has used autumn olive for land reclamation purposes, declaring it a noxious weed statewide has been a source of concern for those of us involved in regulating invasive plants. I am very glad that you support our efforts to amend the noxious weed legislation.

I am moderator for the West Virginia Invasive Species Working Group, a consortium of state and federal agencies, institutions of higher learning, garden clubs, and other organizations that have an interest in non-native, invasive organisms. Please accept my invitation to attend our next meeting scheduled for November 14 at the Flatwoods Days Inn. I think you will find the meeting to be well worth your time.

Thanks again for your comments.

Sincerely,

A handwritten signature in cursive script that reads "Gary W. Gibson".

Gary W. Gibson, Director
Plant Industries Division
1900 Kanawha Boulevard, East
Charleston, WV 25305-0191
Office: (304) 558-2212 Fax: (304) 558-2435
Email: ggibson@ag.state.wv.us

June 20, 2006

Fred Hays
P.O. Box 241
Elkview, WV. 25071

Phone 548-7117

Sherri Hutchinson
WVDA
Plant Industries
1900 Kanawha Blvd. E.
Charleston , WV 25305-0191

I am writing in response to your proposal to add plants too and adapt FWS list of plants as "noxious weeds".

I am a land manager, educator, conservation supervisor, farmer, and one of many who cares about the loss of our natural resources.

The list of plants should be dropped. The list provided by FWS should be dropped.

The basis for all these claims have to do with poor land management practices and the actual propagation of one kind of weed by certain practices.

The entire premise for this list is based on junk science and the intent is to obtain funding for eradication programs. The charter of WVDA, The DOF and others is for the conservation of natural resources not the destruction of natural resources.

If you wish to declare a plant as bad and want to remove it from existence there should be a scientific basis for doing so. This does not exist and I for one can prove this.

For a better understanding of what is actually happening with these plants I have provided you with a copy of a letter being circulated around the state and country concerning this same issue. With common sense in mind I am hopeful that you will read and understand and not take harmful actions that will trigger reactions on the part of people who actually do care.

I can be reached at the listed number above and would be happy to discuss this issue with you.

Warm Regards, Fred Hays ,Certified Holistic Educator

Summary of Learning From the Meeting /Tour on June 15 at Hays

Farms

Hello all,

I wanted to contact you and summarize the learning that was covered at our meeting on the 15th. Considering the short amount of time and the amount of ground covered on our walk, discussion was cut too short and too much is left to assumption. Therefore to summarize what was viewed is beneficial for attendees and for those who could not attend.

Ed Murriner covered USFW findings and the certification process for growers in the morning. It appears we are getting some of these political issues involving government obstacles out of the way and that we as growers and land managers will now be able to focus on more serious issues.

With this in mind the walking part of our agenda with speakers was by design a good place to start and to recognize just how profound some of our natural resource issues really are. What was witnessed will now help to define where the next great obstacles to forest industries might be as the industry begins to emerge.

It could be said that we are all talking now and are all friends as far as I can tell. With this in mind I want to present the groundwork of some work I have been doing that you viewed and where problems actually are for our future resource base. Perhaps our greatest challenges for our future have everything to do with how well people can come to understand ecosystem processes and nothing to do with presumed problems.

For those who are passionate about what they do I would ask that you please put aside your preconceived notions about plants and that you be willing to look at things through a new lens so to speak. I have noted the recent activities in Ohio concerning claims about problems weeds and now have looked at the agenda of Russ Richardson's meeting later this month. I am extremely concerned not about weeds but about what all this means with regards to the kinds of actions people are taking in dealing with weeds. I have attempted to extend information to certain people before and have ask questions without getting answers so now I will attempt to illustrate some truths that are both self evident and have been observed by many of you whether directly or otherwise. While I and the many other educators I am associated with do not claim to have all the answers we do have a way to get at all the answers.

First I discussed deer browse on ginseng and pointed out the fact that the traditional sites down the hollow where ginseng is grown with what we have called indicator plants has uncontrollable browse. We viewed a strip of land now in young forest, which is a good site but nonetheless has very few indicator plants one would expect to find where ginseng grows. This site had previously been an orchard. While some browse from deer occurs on this site it is not nearly to the extent that it happens on the sites with traditional companion plants.

What is happening here? On one part of this strip the dominant plant is rag wart. The ginseng coexist with the rag wart with the rag wart providing much needed shade and cover during the spring prior to the young trees being in full canopy. The rag wart grows up tall to flower and as the trees come to full canopy it becomes more dormant releasing the ginseng for optimal growth. White tail deer are not attracted to rag wart thus browsing protection is provided by this weed.

As we move northwest across this planted area we come to an area where some intensive culturing in nursery cans exist and is also the most vulnerable area for browsing because it is nearly all ginseng. The browsing was viewed and noted and a recently installed electric fence was discussed. Moving on we come into a moister area where the ginseng is growing with stilt grass and jewel weed. Many of the plants on this site are larger being four pronged and grow at a faster rate. Again the deer browse is limited because the deer do not eat the stilt grass except during early August. While deer do browse jewelweed the jewelweed is high enough to assist in preventing the over browse of the ginseng plants. In fact the deer actually work to assist the health of the ginseng in this instance because they clip the tops of the jewelweed permitting better energy flow to the ginseng. The stilt grass rarely reaches enough energy to emerge beyond six to seven inches in height. This companion planting is functioning in similar fashion to the one with rag wart except it is a moist site by comparison. The ginseng is benefited by the jewel weed in that jewel weed is very succulent and takes up excess moisture which helps ginseng to avoid wet conditions that bring about diseases. Removing the jewelweed would make the site too wet for ginseng and would release the stilt grass to grow taller. This increase in biodiversity helps to avoid the dominance of any one plant.

These sites now hold ginseng six years old with increasing biodiversity.

Next we moved up into the timber road, which borders the entire strip on the up hillside. Several years ago this road was heavily compacted hardpan clay associated with disturbed road areas found within timber harvest areas. The most dominant plant on this road was stilt grass as pointed out by Russ Richardson several years ago. We viewed this road, which presently is dominated by perennial rye grass. How did this change come about?

A year ago I completed the process of structured diagnosis on stilt grass both in the forest and on the grasslands. At this time it appeared that the use of fescue grasses on disturbed sites from various industries over the years had contributed as a root cause to the presence of stilt grass and other weedy annual plants in the area.

While as Holistic Practitioners we assume we are wrong as we move forward, at this time the clues indicated with that diagnosis continue to move my management in a positive direction.

How? It was noted that the dormancy period for fescues which prefer cool damp weather come at a time when stilt grass is first emerging. It was also noted that the water cycle is severely damaged by the same disturbances of road building etc because water is rechanneled away from areas traditionally moist and onto areas traditionally dry. The dynamics of plant communities has to change under these conditions. Therefore stilt grass is filling a vacuum of missing biodiversity on these semi shady areas that also have ample moisture at a time when it is most needed otherwise erosion would occur on a large scale. Why concern myself with the presence of stilt grass, which is performing a valuable function in repairing ecosystem damage caused by human activity?

While I have little concern about this trivial weed I considered where it might be a problem with production. For example unpalatable forage for livestock where red clover could be or unpalatable forage for wild life where deer tongue and jewel weed could be. Moreover my greater concern was the misunderstanding of this plant by others and their impending actions. It is important to understand the consequences of human activity, which may impact my future resource base along with that of our children.

A mixture of mostly perennial rye grass seed was tilled into the soil surface in the fall. The area was limed considering that the forest soils on these sites tend to be very acidic. While the rye grass has the tendency to go dormant at the same time stilt grass emerges it was chosen because of the characteristic to grow rapidly in spring and to form a heavy thatch. As it goes dormant it tends to fall over and pack forming natural mulch, which inhibits seedlings emerging. In addition to this characteristic it also provides reasonable forage for livestock and getting livestock to impact the road was part of the plan. Because most of our biodiversity is found in the soil it is critical to get the rebuilding process going quickly for rapid change in the community dynamics. Microorganisms needed in the soil exist in the guts of large herbivores. The hoof action creates a cupping effect, which helps the site to hold water also needed by microbial life and plants.

While it may not be practical for everyone to use animals, the fact that our environment is a very non-brittle environment lends itself to the use of rest as a very powerful tool to increase biodiversity. Therefore, if you cannot obtain the benefit of the use of animals the cure on these sites can still be obtained with rest once the seeding action has been addressed with planting of suitable grasses. Just leaving these areas alone to rest will in time bring about an increase in biodiversity at which time stilt grass and other annual weeds will give way as monocultures. In a production area this may not be timely enough as a management objective.

As you noted stilt grass has become almost non-existent on this road site and the soil biodiversity is increasing. This is evident just by walking on the road. The soil and grass presses down somewhat like walking on a bed mattress, not concrete.

How is this site managed? Do not mow? If you want biodiversity and a suppression of a weed monoculture it is critical that the mass of plant material be left in place during the summer. This holds in moisture, which supports more microbial life, insects, mollusk, salamanders, earthworms etc, etc. In monitoring this site one does not need to disturb the soil to obtain evidence that biodiversity is increasing in this way. One of the first organisms to catch my attention has been the presence of woodcocks, which feed primarily on earthworms. These birds are commonly jumped on the road as I walk.

A note about mowing;

If you feel you must mow such a site use a mowing scythe. Yes, the old fashioned kind that you swing because it is faster than a weed eater but more importantly does not disturb the soil. If there were ever a piece of technology that does not belong on a forest trail or road it is the weed eater. The string or blade is constantly hitting the soil and creating small disturbances essentially cultivating stilt grass and other annual weeds that emerge in this way from tiny seeds. Years ago before I even had a name for stilt grass I called it the weed eater weed. A hillside on my mother's property that had always been maintained with a mowing scythe while I was growing up had a great diversity of plants. As I grew up and moved away along with my brothers a brother in law began mowing this hill with a weed eater. He would keep it mowed to the soil with this machine and it always looked very neat but after a few years stilt grass was the only plant found on the entire hillside. No, it was not that this plant has an ability to kill other plants. That is silly. It happened because the practice with the weed eater actually killed off the perennials before they could seed and disturbed the soil to get the stilt grass to establish. The practice of using the technology was a deliberate act with good intention that actually eliminated every specie except the stilt grass.

Why all the hoopla about one little plant that we hear today or any weed? We hear terms like invasive, exotic, alien invasive, etc. I have to be blunt here. This is junk science on a sugar diet. Lets examine the facts.

There really are no such species that can be defined as alien or non-native. We know of no plants that came from other planets. This is a claim made if a plant makes it from one land mass to another. The claim is often made by the same people that humans carry these plants abroad and cause these problems. Ironically, it is only a very small percentage of plants that are carried and introduced by man. Birds, animals, winds etc introduce the large percentage naturally. The entire notion that if humans did it, it is not natural is a false premise in and of itself. We have been a part of the ecosystem for a very long time.

The notion that a plant is declared native or non-native is a political statement as Allan Savory points out. In this country the government claims that if it were here in 1650 it is ok but if not it is non-native. Ginseng, elks are considered native under this rule when in fact they are not. Man brought both here. The African lion and the zebra are actually native to North America not Africa and on and on. As we start to examine this craze about native non native the entire premise becomes daunting and idiotic.

In talking with another educator in Pennsylvania yesterday I learned that there a group of people are attacking and creating eradication programs for Japanese Knot Weed of all things. They want to eliminate this from stream riparian areas. Ironically, there could not be a better match that Knot Weed as a plant to correct unstable eroding stream banks. The very same people that have for years complained about the need to establish plants on these sites to stop the erosion are the ones now fighting to stop the plants from stopping erosion. This is nothing more than discrimination based on the fact that Knotweed is a new form of added biodiversity. It is perfectly suited for the job because it can handle the mistakes of land managers and will in time give way to great biodiversity within the plant community.

Putting that aside we are forced to deal with nature under nature's rules.

Many point to the fact that Charles Darwin studied biodiversity on an island, which has been greatly impacted by the introduction of other species. While Darwin's island has been altered it is an island that was isolated for a long time. The same cannot be said for our larger continents. Things have been moving back and forth between these landmasses forever. This is not to say that when a new species is introduced it should be ignored. At first they can cause problems but once there we must be able to deal with them without destroying the entire ecosystem. Holistic management offers the only way to do that correctly and move in a positive direction minimizing damages from Unwitted actions. Understanding that nature functions in wholes comes first. You cannot solve these problems with parts thinking the hallmark of linear science. This does not mean that we throw out information we have but that we use it appropriately understanding the relevance of what is presented.

I believe much of this problem with the science originates with Darwin. While many have challenged his work on a religious basis we here little or nothing of other factors being considered in evolutionary theory. One little detail has caused great damage. (the devil is truly in the details) He did not assume that he might be wrong about some details nor did any of his followers to this day. Darwin claimed that evolution happened through competition between species and within species. In fact it has been pointed out

that this oversight misses the larger element. It is a small percentage of species that evolve by competition. Most species of plants animals and microorganisms (if not all) evolve through co-operation and symbiotic relationships such as the relationship between stilt grass, jewelweed and ginseng that I pointed out. If you think about what is happening with that, we are viewing evolution in action, which is kind of exciting. The deer herd has been purposefully mis managed by the government with one thing in mind instead of a holistic perspective. This has triggered another way to produce ginseng, a plant linked to man. In time ginseng will adapt specific preferences for companion plants such as rag wart and stilt grass to avoid predation.

When we looked at the red oak tree during the meeting and discussed how to release it to grow faster we discussed the use of the poplars on the sides to prevent side branches from developing and to keep the tree growing straight up to obtain energy from the sun.

A forester that understands this at the tree level should be able to understand this on a smaller plant level. The function of the energy cycle is the same whether we are manipulating the growth of a tree, a tomato plant or how to manage a weed from being too dominant. If you cut down all the trees lots of little trees and other plants will suddenly emerge because you have altered the energy cycle and therefore the community dynamics. This represents a disturbance and you should anticipate adverse changes. If you keep reducing the plant life down such as weed eating all of the new emerging tree saplings biodiversity will start to disappear on all levels.

Dr. McGraw has pointed out that if the deer population is left unchecked for 100 years that ginseng will cease to exist. There are several flaws in this claim. One is the fact that ginseng as I have demonstrated will simply adapt and evolve as it has in the past to gain protection from deer browse. The other is the fact that the statement leaves out basic biological information about an animal. An over population can not go on for 100 years unless it is manipulated by humans and even then would likely fail at some point long before this time. We already see the coming of Chronic wasting disease. Just yesterday a police officer that I provided fish for stocking his pond too told me how they are now witnessing both mountain lions and our larger black panther in his area and how the DNR is not recognizing this re establishment of major predators. This is good on both counts.

Russ Richardson has stated that to grow ginseng he will have to deal with eradicating stilt grass every year indefinitely.

Lets examine what this is and why this is. Essentially what he is saying is that he is not gaining ground. If this is the case and we look at the simple fact that the weed eating is opening up the soil for erosion at every rain event, then after 100 years you will not need to concern yourself with it because you will have nothing left but rock. How is this beneficial? I beg of you and others to please consider your actions. People in Ohio are doing what they refer to as Garlic Mustard pulls using the same kind of logic except they are not protecting a crop, they simply wish to get a rid of a picce of biodiversity. These issues alone should be enough to get people to change their thinking and want to improve their environment instead of destroy it. If nothing else, recognize that what you are doing is not working.

Russ and others, I say this as your friend. Look at what you are doing. Look at what I have given you. Put your egos aside and address the problems. Anyone who wants to come for a visit I will accommodate you and show you what you may have missed. If

nothing else just try a test plot on a small portion of the land and try working with nature. There is not any more land to go around.

The use of a weed eater in the forest roads is no different than using fire or herbicides as far as removing biodiversity and reducing it down to annual plants with lots of little seeds. You are actually cultivating and re cultivating stilt grass.

Here are the consequences of doing what you are doing now and the consequences of doing things from a holistic perspective that I have outlined.

Weed eating, burning, spraying herbicides, and operating on native plant myths will result in the following products.

Ecologically, a reduction in biodiversity, erosion down to the bedrock, loss of land use for production, poor water quality, only fire tolerant species left after a while.
Socially, Loss of community, loss of culture, resentment from the public, class action law suits.

Financially, Thousands of dollars annually to pay for labor and materials to kill evolving biodiversity. Loss of any kind of production from the site including timber and ginseng, loss of production as a future resource base, loss of community revenue.

Operating from the Holistic Framework as I have described will result in the following.

Ecologically, increasing biodiversity, improved microclimates, decreased work to maintain the sites in a healthy state, improved water cycling with greater consistency, An ecosystem that is sustainable for the future,

Socially, improving communities, sustained culture, happy people, healthy futures.

Financially, increasing income from products with decreasing expenses from labor and management materials as nature does more and more of the work, increasing community with more revenue, better infrastructure, clearly a sound future that can be invested in.

Conclusions based on evidence so far,

Plants do not "invade"

Biology should be part of how decisions about land management actions come about, and not parts thinking.

Nature functions in wholes and working with the whole is all that is real

Rest is the most powerful tool in a non brittle environment

Community dynamics can be used to manipulate energy flow and therefore plants specie composition.

Native/ non native has no place in our vocabulary for addressing natural resource problems.

We need to work to educate the public and the government of the potential mass destruction that could occur if this eradication concept is not kept in check.

We need to eliminate funding for such projects since this is the apparent reason eradication is pursued.

All biodiversity is good and no one has the right to attempt the extinction of a single specie. Appreciate and value each specie for what it adds whether you know of its purpose or not.

Fred Hays



State of West Virginia
DEPARTMENT OF AGRICULTURE
Gus R. Douglass, Commissioner

Janet L. Fisher
Deputy Commissioner

Steve Hannah
Deputy Commissioner

June 28, 2006

Mr. Fred Hays
P.O. Box 241
Elkview, WV

Dear Mr. Hays;

Thank you for your comments regarding the proposed amendments to the West Virginia Noxious Weed Act Rules. We will note your comments for the file.

Our Agricultural Weed Specialist David Dick would like to point out, however, that these plants were largely selected because they are causing problems more in unmanaged – not mismanaged – lands; as well as on agricultural lands. We aren't soliciting funds for eradication efforts with the amendments and don't foresee any forthcoming funds.

One of our objectives is to curtail the movement of weeds not known to occur within the state into West Virginia, thus protecting our States' existing resources. If objectionable plants don't get here, they don't become an issue.

I was interested in your results on stiltgrass with the perennial rye grass and mowing techniques. Most individuals with a stiltgrass problem don't consider it trivial and have spent considerable time and effort trying to get rid of it if their funding permits. With your permission, this would be a good study to mention to those that can't afford mechanical or chemical control measures.

Sincerely,

Sherri F. Hutchinson
Plant Industries Division

c: David Dick

Phone call

6-21-06 8:29 am

Tim Foster of West Fork
Conservation District. Wants
tatarian honeysuckle added to
noxious weeds. Told him it
was added on 6-19-06 along
with Morrow's honeysuckle.

Was satisfied with this
information & concluded the call.

Ans. by Shustchinson