



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE AND FILING WITH THE LEGISLATIVE RULE-
MAKING REVIEW COMMITTEE**

AGENCY: Agriculture TITLE-SERIES: 61-14A
RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No
RULE NAME: 61-14A Noxious Weeds

PRIMARY CONTACT

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CITE STATUTORY AUTHORITY: §19-12D-4

EXPLANATION OF THE STATUTORY AUTHORITY FOR THE LEGISLATIVE RULE, INCLUDING A DETAILED SUMMARY OF THE EFFECT OF EACH PROVISION OF THE LEGISLATIVE RULE WITH CITATION TO THE SPECIFIC STATUTORY PROVISION WHICH EMPOWERS THE AGENCY TO ENACT SUCH RULE PROVISION:

§19-12D-4 allows the Commissioner of Agriculture to administer and enforce 61CSR14A

DATE eFiled FOR NOTICE OF HEARING OR PUBLIC COMMENT PERIOD: 6/22/2017

DATE OF PUBLIC HEARING(S) OR PUBLIC COMMENT PERIOD ENDED: 7/22/2017

COMMENTS RECEIVED: Yes

(IF YES, PLEASE UPLOAD IN THE COMMENTS RECEIVED FIELD COMMENTS RECEIVED AND RESPONSES TO COMMENTS)

PUBLIC HEARING: No

(IF YES, PLEASE UPLOAD IN THE PUBLIC HEARING FIELD PERSONS WHO APPEARED AT THE HEARING(S) AND TRANSCRIPTS)

RELEVANT FEDERAL STATUTES OR REGULATIONS: No

WHAT OTHER NOTICE, INCLUDING ADVERTISING, DID YOU GIVE OF THE HEARING?

N/A

SUMMARY OF THE CONTENT OF THE LEGISLATIVE RULE, AND A DETAILED DESCRIPTION OF THE RULE'S PURPOSE AND ALL PROPOSED CHANGES TO THE RULE:

An amendment to add to the list of noxious plants. Surveys have shown that the following plant is a detriment to agriculture in WV and are hereby declared to be noxious weeds and added to the WV Noxious Weed rule list: Japanese Barberry (Berberis thunbergii DC) Also, the plant known as Kudzu (Pueraria thunbergiana (S and Z) Benth) has been removed from permit cropping and added to the noxious weed list.

STATEMENT OF CIRCUMSTANCES WHICH REQUIRE THE RULE:

Surveys have shown that Japanese Barberry is a detriment to agriculture.

SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED LEGISLATIVE RULE:

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

No financial impact.

B. ECONOMIC IMPACT OF THE LEGISLATIVE RULE ON THE STATE OR ITS RESIDENTS:

None noted

C. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2017 Increase/Decrease (use "-")	2018 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0	0	0
Personal Services			
Current Expenses			
Repairs and Alterations			
Assets			
Other			
2. Estimated Total Revenues	0	0	0

D. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):

None noted

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENTS ARE TRUE AND CORRECT.

61CSR14A

TITLE 61
LEGISLATIVE RULES
DEPARTMENT OF AGRICULTURE

SERIES 14A
RULES DEALING WITH NOXIOUS WEEDS

§61-14A-1. General.

1.1. Scope. -- This Legislative rule sets forth provisions governing noxious weeds. It sets 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. -- ~~April 9, 2007.~~

1.4. Effective Date. -- ~~July 1, 2007.~~

1.5. Sunset Date. -- This rule shall terminate and have no further force or effect upon the expiration of 5 years from its effective date.

§61-14A-2. Declaration of Policy.

2.1. This rule is 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 regarding the cooperative suppression or control agreement 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.); 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 umbellate* (Thunb.); Japanese Stiltgrass, *Microstegium vimineum*; Tartarian Honeysuckle, *Lonicera tartarica*; Morrow's Honeysuckle, *L. Morrowii*; ~~and~~ Poison Hemlock *Conium maculatum*. Kudzu, *Pueraria thunbergiana* (S and Z) Benth and Japanese Barberry, *Berberis thunbergii* DC.

~~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. The permit shall be issued by the Commissioner upon application by a prospective grower who agrees to follow cropping practices prescribed by the Commissioner. The cropping practices shall include, but not be limited to, measures to prevent the spread of Kudzu to road sides, rights-of-way or woodlands.~~

~~5.3.5.2.~~ This section is 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)

~~5.4.5.3.~~ West Virginia adopts the Federal Noxious Weed List of the Federal Noxious Weed Act [Public Law 93-629 (7 U.S.C. 2801 et seq.; 88 Stat. 2148)] as an extension of the West Virginia Noxious Weed list. The Federal Noxious Weed List (Appendix A) will be regulated by the West Virginia Noxious Weed Act.

Appendix A:

Federal Noxious Weed List (as of June 30, 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 applanata 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 Benth
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 couchgrass)
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)
Senecio inaequidens DC (South African ragwort)
Senecio madagascariensis Poir (Madagascar ragwort)
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)