



RULES AND REGULATIONS

Title 17—CONSERVATION AND NATURAL RESOURCES

DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES

[17 PA. CODE CH. 45]

Conservation of Pennsylvania Native Wild Plants

[48 Pa.B. 7757]

[Saturday, December 22, 2018]

The Department of Conservation and Natural Resources (Department) amends Chapter 45 (relating to conservation of Pennsylvania native wild plants) to read as set forth in Annex A.

A. *Effective Date*

This final-form rulemaking will go into effect upon final-form publication in the *Pennsylvania Bulletin*.

B. *Contact Persons*

The primary contact for questions regarding this final-form rulemaking is Rebecca H. Bowen, Chief, Ecological Services, Bureau of Forestry, Department of Conservation and Natural Resources, P.O. Box 8552, Harrisburg, PA 17105-8552, (717) 787-3444, rebbowen@pa.gov. The secondary contact for questions regarding this final-form rulemaking is Stephen Ekema-Agbaw, Assistant Counsel, Office of Chief Counsel, Department of Conservation and Natural Resources, P.O. Box 8767, Harrisburg, PA 17105, (717) 772-4171, sekema@pa.gov.

C. *Statutory Authority*

This final-form rulemaking is authorized under section 7 of the Wild Resource Conservation Act (WRCA) (32 P.S. § 5307) and sections 305(a)(9) and 313(g) of the Conservation and Natural Resources Act (CNRA) (71 P.S. §§ 1340.305(a)(9) and 1340.313(g)).

Section 7(a) of the WRCA provides that "the [former] Department of Environmental Resources shall. . .conduct investigations on wild plants in order to ascertain information relating to. . .other biological and ecological data to classify plants and to determine management measures necessary for their continued ability to sustain themselves successfully." Under section 7(c) of the WRCA, "[o]n the basis of such determinations, the Environmental Quality Board shall issue regulations not later than 2 years from the effective date of" the WRCA. Under section 7(c) of the WRCA, "[t]he Environmental Quality Board may add or delete species as conditions change and may modify regulations to reflect the changing environment."

Section 305(a)(9) of the CNRA transferred to the Department "the powers and duties vested in the Department of Environmental Resources by the . . . Wild Resource Conservation Act." The former Department of Environmental Resources was the Department's predecessor in this interest. Section 313(g) of the CNRA transferred to the Department "the powers and duties previously vested the Environmental Quality Board by. . . [s]ections 7, 8 and 9" of the WRCA.

D. Purpose and Background

Purpose

This final-form rulemaking amends Chapter 45 by updating: 1) the classification lists of native wild plants; 2) the scientific and common names of certain native wild plants; and 3) the reference source that the Department uses for the names of native wild plants.

Regarding updates to the classification lists of native wild plants, this final-form rulemaking amends the following classification lists: Pennsylvania Extirpated (§ 45.11); Pennsylvania Endangered (§ 45.12); Pennsylvania Threatened (§ 45.13); Pennsylvania Rare (§ 45.14); and Tentatively Undetermined (§ 45.21).

This final-form rulemaking amends the classification lists by: 1) adding plants that are currently unclassified to a classification list; 2) reclassifying plants already on a classification list to a new classification; and 3) removing plants from the classification lists altogether (declassifying them).

Process of classifying native wild plants in this Commonwealth

Native wild plant species are those plant species that existed in this Commonwealth prior to European settlement. There are approximately 2,800 native wild plant species that currently exist or formerly existed in this Commonwealth. The Department classifies approximately 1/5 of these species because they are a conservation concern; the other 4/5 are considered secure and thus not classified.

The Department begins the process of classifying native wild plants by collecting and analyzing data on native wild plant species in this Commonwealth. The Department uses the following data to make its classification decisions: numbers of populations known in this Commonwealth; number of individuals within populations; the plant's range (amount of ground that it covers); threats such as pests, invasive species and habitat loss; decrease or increase in population numbers; and taxonomic information. The previous list is not exhaustive. The Department analyzes this data to determine the population, distribution, habitat needs, limiting factors, and other biological and ecological information about each plant species.

An important piece of data that the Department uses to make classification decisions are referred to as "State ranks." In this Commonwealth, each plant species receives a State rank from the Pennsylvania Natural Heritage Program (PNHP). The PNHP assigns these ranks based on a methodology created by Nature Serve, an international network of natural heritage programs. The purpose of Nature Serve's methodology is to bring consistency to the biodiversity conservation efforts of individuals and organizations throughout the Western Hemisphere. This methodology is used across North America, Central America and South America. By using this standard tool, the Department ensures its evaluation methods are, at a minimum, equivalent to that of other states and countries in the Western Hemisphere and that its classification decisions are based on sound science.

Throughout this process the Department also receives data, information and recommendations

from the Pennsylvania Biological Survey's Vascular Plant Technical Committee (Committee). The Committee is composed of professional botanists working throughout this Commonwealth in academic, consulting, governmental and conservation organizations. Each year, the Committee makes classification recommendations for native wild plants based on the research and expertise of its professional botanists.

The Department assimilates and reviews all data and recommendations it collects and receives, and determines the appropriate classifications for each native wild plant species under the definitions in Chapter 45.

Native wild plant classifications

Under section 7(a) of the WRCA, how plants are classified determines the "management measures necessary for their continued ability to sustain themselves successfully." Native wild plant species that are at risk of extinction in this Commonwealth need greater protection than those less susceptible to this risk. Chapter 45 designates the level of risk facing native wild plant species in this Commonwealth by classifying them as follows:

Pennsylvania Extirpated (§ 45.11)ô A classification of plant species believed to be extinct in this Commonwealth. If a plant species classified as Pennsylvania Extirpated is later found to exist in this Commonwealth it will automatically be considered classified as Pennsylvania Endangered.

Pennsylvania Endangered (§ 45.12)ô A classification of plant species that are in danger of extinction throughout most or all of their natural range in this Commonwealth if critical habitat is not maintained or if the species is greatly exploited by man. This classification also includes populations of plant species that have been classified as Pennsylvania Extirpated but are subsequently found to exist in this Commonwealth.

Pennsylvania Threatened (§ 45.13)ô A classification of plant species that may become endangered throughout most or all of their natural range in this Commonwealth if critical habitat is not maintained to prevent their further decline, or if the species is greatly exploited by man.

Pennsylvania Rare (§ 45.14)ô A classification of plant species that are uncommon in this Commonwealth because they have low population numbers or are only found in restricted geographic areas.

Pennsylvania Vulnerable (§ 45.15)ô A classification of plant species that are in danger of population decline in this Commonwealth because of their beauty, economic value, use as a cultivar or other factors which indicate that persons may seek to remove these species from their native habitats.

Special Concern Population (§ 45.20)ô A classification of plant species that the Department has determined to be a unique occurrence deserving protection. Among the factors used to classify a plant species as a Special Concern Population are the existence of unusual geographic locations, unisexual populations or extraordinarily diverse plant populations.

Tentatively Undetermined (§ 45.21)ô A classification of plant species that are in danger of population decline but do not meet the criteria for any other classification due to taxonomic uncertainties, limited historical records or insufficient data.

Updating species nomenclature

This final-form rulemaking updates the scientific and common names of certain native wild

plant species to conform to the Department's new taxonomic source material.

The current nomenclature used to identify species taxonomy in Chapter 45 comes from John T. Kartesz's 1980 publication, *A Synonymized Checklist of the Vascular Flora of the United States, Canada and Greenland, Volume 2: The Biota of North America*. The Department now uses *The Plants of Pennsylvania Second Edition* (2007) by Ann Fowler Rhoads and Timothy A. Block as a reference. This final-form rulemaking updates the reference to reflect the most up-to-date information on native wild plants in this Commonwealth. This necessitates an update to the scientific and common names in Chapter 45 to remain consistent with the new source material. Additionally, this rulemaking corrects minor grammatical errors and misspellings of species names.

Pennsylvania Natural Diversity Inventory

The amendments will be incorporated into the Pennsylvania Natural Diversity Inventory (PNDI).

The PNDI is a database that maintains the Department's list of native wild plant classifications, as well as native rare wildlife classifications from the Game Commission, the Fish and Boat Commission and the United States Fish and Wildlife Service. The PNDI provides the most current, reliable and objective scientific information about ecological resources in this Commonwealth and it is used to help inform environmental decisions in the Commonwealth. Most notably, the Department of Environmental Protection (DEP) uses the PNDI to inform its environmental permitting decisions.

The overwhelming majority of users use the PNDI as part of the process of obtaining a DEP permit. The DEP requires permit applicants to screen their land use projects through the PNDI for potential impacts to threatened or endangered species to receive a DEP permit; threatened and endangered plant species are thereby protected by the DEP's permitting process.

Although this final-form rulemaking will result in updates to the plant data in the PNDI, this final-form rulemaking will not affect the DEP's permitting process. The process of obtaining a DEP permit is beyond the scope of this final-form rulemaking. Instead, the PNDI's connection to this final-form rulemaking is limited to its use of the plant data that will result from the amendments. No person, business, small business or organization will be required to invest in additional administrative procedures as a direct result of this final-form rulemaking.

Finally, because this final-form rulemaking will remove more species from classifications than it adds, there may be fewer classified plant species for prospective DEP permit applicants to account for when applying to obtain DEP permits. Depending on the project type, location and classified plant species in question, prospective DEP permit applicants may see no change in the amount of mitigation required to address impacts to threatened and endangered species and fulfil permit requirements.

E. Response to Comments

The Department published notice of the proposed rulemaking at 47 Pa.B. 7210 (November 25, 2017), with a 30-day public comment period. The Department received 14 comments from the public, two of which were substantively identical. The Department did not receive any comments from the Independent Regulatory Review Commission (IRRC) or the Senate and House Environmental Resources and Energy Committees.

The public comments were overwhelmingly positive and praised the Department for updating

Pennsylvania's native wild plant classifications. Commenters were generally concerned with ensuring that this Commonwealth's most vulnerable plants were properly identified for protection. Additionally, commenters commended the Department for relying on the most current scientific data in classifying the plants in this final-form rulemaking.

The Department addressed the comments from the public in a comment and response document. To obtain a copy of this document contact Rebecca Bowen by the contact information provided in section B.

F. Summary of this Final-Form Rulemaking and Changes from Proposed to Final-Form Rulemaking

Subchapter A. General provisions

The definition of "unlisted" will be deleted from § 45.2 (relating to definitions) because it is not used in Chapter 45.

Amendments to § 45.3 (relating to classified plant taxonomy) update the taxonomic source material that the Department uses for the nomenclature of native wild plants from John T. Kartesz and Rosemarie Kartesz, *A Synonymized Checklist of the Vascular Flora of the United States, Canada and Greenland, Volume 2: The Biota of North America* (1980), to Ann Fowler Rhoads and Timothy A. Block, *The Plants of Pennsylvania An Illustrated Manual Second Edition* (2007), Philadelphia, Pennsylvania: University of Pennsylvania Press.

Subchapter B. Classified plants

There are 130 substantive amendments to Subchapter B (relating to classified plants), with 79 name changes and 51 classification changes. The substantive amendments include: 9 currently unclassified plant species to be newly classified; 11 currently classified plant species to be reclassified; 31 currently classified plant species to be unclassified; and 79 currently classified plant species with name changes.

For the purposes of this final-form rulemaking, a substantive name change is one that changes the meaning of the plant name (see the following "plant name changes" section). This final-form rulemaking makes minor grammatical corrections to plant names (that is, adding periods, deleting commas and fixing spelling errors) that do not change the meaning of the plant name and are therefore not substantive.

Changes from Proposed to Final-Form Rulemaking

The Department did not make any changes to the Annex from the proposed to this final-form rulemaking. The Department received overwhelming public support for this rulemaking during the public comment period.

Newly classified and reclassified plant species

Scientific Name	Common Name	Current	Final	Reason for Change	Habitat/Identification Window
<i>Asclepias variegata</i> L.	White Milkweed	TU	PE	Population decrease; habitat decline	Dry woods; flowers late Mayô July

<i>Baptisia australis</i> (L.) R. Br.	Blue False Indigo	N	PT	Population decrease; unique/rare habitat	River cobble bars and banks; flowers May- June, identifiable most months by leaf and seed pod
<i>Coeloglossum viride</i> (L.) Hartm.	Long-Bracted Green Orchis	TU	PE	Population decrease; vulnerable to exploitation	Rich woods; flowers May- August
<i>Cypripedium parviflorum</i> Salisb. var. <i>makasin</i> (Source: <i>Flora of North America</i>)	Northern Small Yellow Lady's-Slipper	N	PE	Taxon split into distinct subspecies; low numbers; unique/rare habitat; vulnerable to exploitation	Moist woods, bogs; flowers April- June
<i>Epilobium strictum</i> Muhl.	Downy Willow-Herb	PE	PR	Population increase; habitat decline; unique/rare habitat	Wet meadows, marshes, fens, thickets; flowers July- September
<i>Equisetum scirpoides</i> Michx. (Source: <i>Flora of North America</i>)	Dwarf Scouring-Rush	N	PE	Recent discovery in this Commonwealth; low numbers; unique/rare habitat	Wet woods and peaty openings; identifiable year-round
<i>Fraxinus profunda</i> (Bush) Bush	Pumpkin Ash	N	PE	Low numbers; unique/rare habitat; vulnerable to exotic pest	Wet bottomland forest, often in shallow water; identifiable year-round
<i>Goodyera tessellata</i> Lodd.	Checked Rattlesnake-Plantain	TU	PE	Population decrease; habitat decline; vulnerable to exploitation	Moist coniferous and deciduous forest; flowers July- early September
<i>Lycopodiella margueritae</i> J. G. Bruce, W. H. Wagner & Beitel	Marguerite's Clubmoss	N	PE	Low numbers; global rarity; unique/rare habitat; vulnerable to exploitation	Moist sandy wetlands and shores; sporulates August - October
<i>Lysimachia quadriflora</i> Sims	Four-Flowered Loosestrife	TU	PX	Population extirpated	Wet meadows, fens; flowers July- August
<i>Malaxis bayardii</i> Fernald	Adder's-Mouth	PR	PE	Population decrease; global rarity; vulnerable to exploitation	Dry open upland forest, shale barrens; flowers July- September
<i>Platanthera aquilonis</i> Sheviak, Lindleyana (Source: <i>Flora of North America</i>)	Northern Green Orchid	N	PE	Taxon split into distinct species; low numbers; vulnerable to exploitation	Wet meadows, marshes, fens, stream banks, moist deciduous forest slopes; flowers June- August

<i>Platanthera huronensis</i> (Nutt.) Lindl.	Huron Green Orchid	N	PE	Taxon split into distinct species; low numbers; vulnerable to exploitation	Wet meadows, bogs, woods; flowers June- August
<i>Platanthera peramoena</i> (A. Gray) A. Gray	Purple Fringeless Orchid	TU	PT	Low numbers; unique/rare habitat; vulnerable to exploitation	Moist meadows, low wet woods, ditches; flowers July- August
<i>Potentilla anserina</i> L.	Silverweed	PT	PR	Unique/rare habitat; tolerant of disturbance	Moist sandy or gravelly shores, or ballast; flowers May- June, identifiable by leaf spring- fall
<i>Ratibida pinnata</i> (Vent.) Barnhart	Gray-Headed Prairie Coneflower	TU	PE	Population decrease	Dry fields, limestone uplands, open road- sides; flowers June- August
<i>Rubus cuneifolius</i> Pursh	Sand Blackberry	TU	PE	Population decrease; habitat decline; unique/rare habitat	Sandy dry open thickets and roadsides; flowers May- June, fruits in July, identifiable by leaf spring- fall
<i>Solidago uliginosa</i> Nutt.	Bog Goldenrod	N	PT	Population decrease; unique/rare habitat	Bogs, swamps, wet meadows, fens; flowers August- October
<i>Vitis rupestris</i> Scheele	Sand Grape	PX	PE	Recent rediscovery in this Commonwealth; low numbers; global rarity; unique/rare habitat	River cobble bars and banks; flowers in May, fruits August- November; identifiable by leaf spring- fall
<i>Zigadenus glaucus</i> (Nutt.) Nutt.	White Camas	N	PE	Recent discovery in this Commonwealth; low numbers; unique/rare habitat	Limestone ledges; flowers in August

Key: N- Currently Unclassified; PX- Pennsylvania Extirpated (§ 45.11); PE- Pennsylvania Endangered (§ 45.12); PT- Pennsylvania Threatened (§ 45.13); PR- Pennsylvania Rare (§ 45.14); PV- Pennsylvania Vulnerable (§ 45.15); TU- Tentatively Undetermined (§ 45.21)

Classified plant species being declassified

Scientific Name	Common Name	Current	Final	Reason for Change	Habitat/Identification
<i>Alopecurus carolinianus</i> Walt.	Tufted Foxtail	PE	DC	Determined to be nonnative to this Commonwealth; determined to be invasive; high numbers	Swamps, ditches, moist meadows; flowers late May- June

<i>Aster firmus</i> Nees	Firm Aster	TU	DC	Tolerant of disturbance; high numbers	Wet meadows, swamps, fens; flowers Augustô October
<i>Atriplex littoralis</i> L.	Seaside Orach	PX	DC	Recent rediscovery in this Commonwealth; determined to be nonnative to this Commonwealth	Coastal areas, beaches, salt-treated roadsides; flowers/fruits Augustô November
<i>Cynanchum laeve</i> (Michx.) Pers.	Smooth Swallow-Wort	PE	DC	Population increase; determined to be invasive; tolerant of disturbance	River banks, agricultural fields, roadsides; flowers Julyô August
<i>Elephantopus carolinianus</i> Raeusch.	Elephant's-Foot	PE	DC	Population increase; tolerant of disturbance	Open woodlands, woodland borders, serpentine barrens; flowers Augustô October
<i>Elodea canadensis</i> L. C. Rich.	Broad Waterweed (Male Plants)	TU	DC	High population numbers	Shallow water of rivers, creeks, lakes, ponds; flowers late Juneô early August
<i>Juncus gymnocarpus</i> Coville	Coville's Rush	PR	DC	Population increase; tolerant of disturbance	Swamps, seeps, springheads; flowers/fruits in summer
<i>Lemna obscura</i> (Austin) Daubs	Little Water Duckweed	PX	DC	Determined to be nonnative to this Commonwealth; tolerant of disturbance	Shallow water, often in disturbed areas; identifiable by leaf springô fall
<i>Lycopodium selago</i> L.	Mountain Clubmoss	PX	DC	Misidentified; redetermination	Cool boreal cliffs, forests, meadows, shores; sporulates Julyô September
<i>Myriophyllum heterophyllum</i> (Michx.)	Broad-Leaved Water-Milfoil	PE	DC	Recent rediscovery in this Commonwealth; determined to be nonnative to this Commonwealth	Still water of ponds, lakes; flowers Juneô July
<i>Nelumbo lutea</i> (Willd.) Pers.	American Lotus	PE	DC	Determined to be nonnative to this Commonwealth; determined to be invasive	Ponds and other quiet water; flowers Juneô September
<i>Panicum bicknellii</i> Nash (Fernald, M.	Bicknell's Panic-Grass	TU	DC	Taxonomic uncertainties	Wet or moist sandy woods; flowers Mayô

L., <i>Gray's Manual of Botany</i> , 1970, Eighth Edition)					early July and late summerô early fall
<i>Panicum longiligulatum</i> Nash (Morris Arboretum, 1992, Pennsylvania Flora Database)	Long-Ligule Panic-Grass	TU	DC	Taxon lumped with another species	Dry woods, slopes, clearings; flowers Mayô early July and late summerô early fall
<i>Panicum recognitum</i> Fern. (Morris Arboretum, 1992, Pennsylvania Flora Database)	Fernald's Panic-Grass	TU	DC	Taxon lumped with another species	Moist sandy woods; flowers Mayô early July and late summerô early fall
<i>Paronychia fastigiata</i> (Raf.) Fern. var. <i>paleacea</i> Fern.	Chaffy Whitlow Wort	TU	DC	Taxon lumped with another species	Dry, rocky, sandy open woods and edges; flowers Julyô September
<i>Platanthera hyperborea</i> (L.) Lindl.	Leafy Northern Green Orchid	PE	DC	Misidentified; redetermination	Wet tundra, stream banks; flowers Julyô August
<i>Polygonum robustius</i> (Small) Fern.	Robust Smartweed	PT	DC	Population increase; disturbance tolerant	Swamps, lake shores, streams; flowers Julyô October
<i>Potamogeton illinoensis</i> Morong	Illinois Pondweed	TU	DC	High numbers; disturbance tolerant	Rivers, streams, lakes, ponds; flowers/fruits summerô fall
<i>Prenanthes crepidinea</i> Michx.	Crepis Rattlesnake-Root	PE	DC	Population increase	Open and forested floodplains, banks; flowers Augustô November
<i>Pycnanthemum pycnanthemoides</i> (Leavenw.) Fern.	Southern Mountain-Mint	PE	DC	Misidentified; redetermination	Open habitat; flowers Julyô September
<i>Solidago purshii</i> Porter	Pursh's Goldenrod	TU	DC	Taxon lumped with another species	Bogs, swamps, sedge meadows, fens; flowers Augustô October
<i>Spirodela punctata</i> (Mey.) C. H. Thompson	Eastern Water-Flaxseed	TU	DC	Determined to be nonnative to this Commonwealth	Ponds, lakes, swamps, sluggish streams; identifiable by leaf springô fall
<i>Tradescantia ohioensis</i> Raf.	Ohio Spiderwort	TU	DC	High numbers; disturbance tolerant	Alluvial woods, waste ground; flowers Mayô July
<i>Trautvetteria caroliniensis</i> (Walt.) Vail	Carolina Tassel-Rue	PR	DC	High numbers; disturbance tolerant	Wooded seepage slopes, stream banks, bogs; Juneô July

<i>Utricularia inflata</i> Walt.	Floating Bladderwort	PX	DC	Determined to be nonnative to this Commonwealth; determined to be invasive	Lakes, ponds, standing water; flowers Mayô October
<i>Utricularia minor</i> L.	Lesser Bladderwort	PT	DC	Population increase; disturbance tolerant; determined to be invasive	Lakes, ponds, swamps, standing water; flowers Juneô August
<i>Utricularia purpurea</i> Walt.	Purple Bladderwort	PR	DC	Population increase; disturbance tolerant	Lakes, ponds, standing water; flowers Julyô early September
<i>Veronica catenata</i> Pennell	Pennell's Speedwell	TU	DC	Taxonomic uncertainties	Wet fields, ditches, stream edges in shallow water; flowers Mayô September
<i>Viola nephrophylla</i> Greene	Northern Bog Violet	TU	DC	Misidentified; redetermination	Bogs, wet meadows, ditches, stream banks; flowers Mayô July
<i>Viola pedatifida</i> G. Don	Prairie Violet	PE	DC	Misidentified; redetermination	Open prairies, savannas; flowers Aprilô June
<i>Zannichellia palustris</i> L.	Horned Pondweed	TU	DC	Population increase; disturbance tolerant	Streams, ponds, lakes, springs, tidal mudflats; flowers Mayô October

Key: DCô Declassified; Nô Currently Unclassified; PXô Pennsylvania Extirpated (§ 45.11); PEô Pennsylvania Endangered (§ 45.12); PTô Pennsylvania Threatened (§ 45.13); PRô Pennsylvania Rare (§ 45.14); PVô Pennsylvania Vulnerable (§ 45.15); TUô Tentatively Undetermined (§ 45.21)

Plant name changes

Pennsylvania Extirpated (§ 45.11)

The names of 16 native wild plant species classified as Pennsylvania Extirpated will be amended as follows:

Carex aenea Fern. to *Carex foenea* Willd.

Erianthus giganteus (Walt.) Muhl. to *Saccharum giganteum* (Walter) Pers.

Eupatorium album L. to *Eupatorium album* L. var *album*

Gentianopsis procera (Holm) Ma. to *Gentianopsis virgata* (Raf.) Holub

Helianthus angustifolius L. to *Helianthus angustifolius* L.

Hypericum stans (Michx.) P. Adams & Robson to *Hypericum crux-andreae* (L.) Crantz

Koeleria cristata (L.) Pers. to *Koeleria macrantha* (Ledeb.) Schultes

Lycopodium sabinifolium Willd. to *Diphasiastrum sabinifolium* (Willd.) Holub.

Panicum leibergii (Vasey) Scribn. (Gleason, H. A. and A. Cronquist, *Manual of Vascular Plants of Northeastern United States and Adjacent Canada*, 1991, Second Edition) to *Dichanthelium leibergii* (Vasey) Freckmann

Panicum spretum Schultes (Gleason, H. A. and A. Cronquist, *Manual of Vascular Plants of Northeastern United States and Adjacent Canada*, 1991, Second Edition) to *Dichanthelium spretum* (Schult.) Freckmann

Phoradendron serotinum (Raf.) M. C. Johnston to *Phoradendron leucarpum* (Raf.) Reveal & M. C. Johnst.

Sagittaria stagnorum Small to *Sagittaria filiformis* J. G. Sm.

Scirpus heterochaetus Chase to *Schoenoplectus heterochaetus* Chase (Sojak)

Sisyrinchium arenicola E. P. Bickn. to *Sisyrinchium fuscatum* E. P. Bicknell

Sparganium minimum (Hartm.) Fries to *Sparganium natans* L.

Triglochin palustre L. to *Triglochin palustris* L.

Pennsylvania Endangered (§ 45.12)

The names of 28 native wild plant species classified as Pennsylvania Endangered will be amended as follows:

Alisma plantago-aquatica L. var. *americana* Schultes & Schultes to *Alisma triviale* Pursh

Aster borealis (Torr. & Gray) Prov. to *Symphotrichum boreale* (Torr. & Gray) Á Löve & D. Löve

Aster nemoralis Ait. to *Oclemena nemoralis* (Aiton) E. Greene

Aster solidagineus Michx. to *Sericocarpus linifolius* (L.) Britton, Stearns & Poggenb.

Aster spectabilis Ait. to *Eurybia spectabilis* (Aiton) Nesom

Cerastium arvense (L.) var. *villosissimum* Pennell to *Cerastium velutinum* Raf. var. *villosissimum* (Pennell) J. K. Morton

Cymophyllus fraseri (Andr.) Mackenzie to *Cymophyllus fraserianus* (Ker Gawl.) Kartesz & Gandhi

Cypripedium parviflorum Salisb. to *Cypripedium parviflorum* Salisb. var. *parviflorum* (Source: *Flora of North America*)

Frasera caroliniensis Walt. to *Swertia caroliniensis* (Walter) Kuntze

Hemicarpha micrantha (Vahl) Britt. to *Lipocarpa micrantha* (Vahl) G. C. Tucker

Lycopodium alopecuroides L. to *Lycopodiella alopecuroides*(L.) Cranfill

Lycopodium porophilum Lloyd & Underwood to *Huperzia porophila* (F. E. Lloyd & Underw.) Holub

Megalodonta beckii (Torr. ex Spreng.) Greene to *Bidens beckii* (Torr. ex Spreng.) Greene

Myriophyllum exalbescens Fern. to *Myriophyllum sibiricum* Komarov

Onosmodium hispidissimum Mackenzie to *Onosmodium molle* Michx. var. *hispidissimum* (Mack.) Cronquist

Oryzopsis pungens (Torr. ex Spreng.) A. S. Hitchc. to *Piptatherum pungens* (Torr. ex Spreng.) Dorn

Panicum scoparium (Lam.) Gould (Morris Arboretum, 1992, Pennsylvania Flora Database) to *Dichantheium scoparium* (Lam.) Gould

Panicum xanthophysum (Gray) Freckmann (Morris Arboretum, 1992, Pennsylvania Flora Database) to *Dichantheium xanthophysum* (A. Gray) Freckmann

Polygonum careyi Olney to *Persicaria careyi* (Olney) Greene

Polygonum setaceum Baldw. ex Ell. var. *interjectum* Fern. to *Persicaria setacea* (Baldwin) Small

Sagittaria calycina Engelm. var. *spongiosa* Engelm. to *Sagittaria calycina* Engelm.

Scirpus acutus Muhl. ex Bigelow to *Schoenoplectus acutus* (Muhl. Ex Bigel.) Löve & Löve

Scirpus smithii Gray to *Schoenoplectus smithii* (A. Gray) Sojak

Scirpus torreyi Olney to *Schoenoplectus torreyi* (Olney) Palla

Scleria reticularis Michx. to *Scleria muhlenbergii* Steud.

Senecio antennariifolius Britt. to *Packera antennariifolia* (Britton) W. A. Weber & Löve

Solidago spathula DC. spp. *randii* var. *racemosa* (Greene) Gleason to *Solidago simplex* Kunth ssp. *randii* (Porter) Ringius var. *racemosa* (Greene) Ringius

Tomanthera auriculata (Michx.) Raf. to *Agalinis auriculata* (Michx.) S. F. Blake

Pennsylvania Threatened (§ 45.13)

The names of nine native wild plant species classified as Pennsylvania Threatened will be amended as follows:

Aster depauperatus (Porter) Fern. to *Symphyotrichum depauperatum* (Fernald) Nesom

Aster novi-belgii L. to *Symphyotrichum novi-belgii* (L.) Nesom var. *novi-belgii*

Cimicifuga americana Michx. to *Actaea podocarpa* DC

Euthamia tenuifolia (Pursh) Greene to *Euthamia caroliniana* (L.) Greene ex Porter & Britton

Juncus alpinus Vill. to *Juncus alpinoarticulatus* Chaix in Vill. ssp. *nodulosus* (Wahlenb.) Hamet-Ahti.

Juncus balticus Willd. to *Juncus arcticus* Willd. var. *littoralis* (Engelm.) Boivin.

Lycopodium appressum (Chapman) Lloyd & Underwood to *Lycopodiella appressa* (Chapm.) Cranfill

Spiraea betulifolia Pallas ssp. *corymbosa* (Raf.) Taylor & MacBryde to *Spiraea betulifolia* Pallas var. *corymbosa* (Raf.) Maxim.

Talinum teretifolium Pursh to *Phemeranthus teretifolius* (Pursh) Raf.

Pennsylvania Rare (§ 45.14)

The names of four native wild plant species classified as Pennsylvania Rare will be amended as follows:

Panicum commonsianum Ashe var. *euchlamydeum* (Skinner) Pohl (Morris Arboretum, 1992, Pennsylvania Flora Database) to *Dichanthelium commonsianum* (Ashe) Freckmann var. *euchlamydeum* (Shinners) Pohl

Prunus pumila L. to *Prunus pumila* L. var. *pumila*

Scirpus fluviatilis (Torr.) Gray to *Schoenoplectus fluviatilis* (Torr.) Strong

Senecio anonymus Wood to *Packera anonyma* (A. W. Wood) W. A. Weber & Á Löve

Pennsylvania Vulnerable (§ 45.15)

The name of *Cypripedium pubescens* Willd. will be amended to *Cypripedium parviflorum* Salisb. var. *pubescens* (Willd.) Correll.

Tentatively Undetermined (§ 45.21)

The names of 21 native wild plant species classified as tentatively undetermined will be amended as follows:

Aristida curtissii (Gray) Nash to *Aristida dichotoma* Michx. var. *curtissii* A. Gray

Aster dumosus L. to *Symphyotrichum dumosum* (L.) Nesom

Aster ericoides L. to *Symphyotrichum ericoides* (L.) Nesom

Cassia marilandica L. to *Senna marilandica* (L.) Link

Hedyotis purpurea (L.) Torr. & Gray to *Houstonia purpurea* L. var. *purpurea*

Liatris scariosa (L.) Willd. var. *nieuwlandii* Lunell and *Liatris scariosa* (L.) Willd. var. *novae-angliae* Lunell combined *Liatris scariosa* (L.) Willd.

Malaxis brachypoda (Gray) Fern. to *Malaxis monophyllos* (L.) Swartz var. *brachypoda* (A.

Gray) F. Morris & E. A. Eames

Nuphar lutea (L.) Sibthorp & Sm. ssp. *pumilum* (Timm) E. O. Beal to *Nuphar microphylla* (Pers.) Fernald

Panicum annulum Ashe (Morris Arboretum, 1992, Pennsylvania Flora Database) to *Dichantherium annulum* (Ashe) LeBlond

Panicum boreale Nash (Gleason, H. A. and A. Cronquist, *Manual of Vascular Plants of Northeastern United States and Adjacent Canada*, 1991, Second Edition) to *Dichantherium boreale* (Nash) Freckmann

Panicum commonsianum Ashe var. *commonsianum* (Morris Arboretum, 1992, Pennsylvania Flora Database) to *Dichantherium commonsianum* (Ashe) Freckmann

Panicum lucidum Ashe (Fernald, M. L., *Gray's Manual of Botany*, 1970, Eighth Edition) to *Dichantherium lucidum* (Ashe) LeBlond

Panicum villosissimum Nash (Gleason, H. A. and A. Cronquist, *Manual of Vascular Plants of Northeastern United States and Adjacent Canada*, 1991, Second Edition) to *Dichantherium villosissimum* (Nash) Freckmann

Panicum yadkinense Ashe (Gleason, H. A. and A. Cronquist, *Manual of Vascular Plants of Northeastern United States and Adjacent Canada*, 1991, Second Edition) to *Dichantherium yadkinense* (Ashe) Mohlenbr.

Potamogeton filiformis Pers. to *Potamogeton filiformis* Pers. var. *borealis* (Raf.) St. John

Pycnanthemum pilosum Nutt. to *Pycnanthemum verticillatum* (Michx.) Pers. var. *pilosum* (Nutt.) Cooperr.

Ranunculus trichophyllus Chaix (Gleason, H. A. and A. Cronquist, *Manual of Vascular Plants of Northeastern United States and Adjacent Canada*, 1991, Second Edition) to *Ranunculus aquatilis* L. var. *diffusus* With.

Rhynchospora globularis (Chapman) Small to *Rhynchospora recognita* (Gale) Kral

Senecio plattensis Nutt. to *Packera plattensis* (Nutt.) W. A. Weber & Á Löve

Uvularia puberula Michx. to *Uvularia pudica* Michx.

G. Benefits, Costs and Compliance

Benefits

This final-form rulemaking will benefit State, county and municipal conservation planning officials, conservation groups and other organizations concerned with the welfare of the environment because it more accurately represents the plants in this Commonwealth in need of the most protection. Additionally, this rulemaking benefits the citizens of this Commonwealth by protecting this Commonwealth's natural resources, which is a constitutional right. See Pa.Const. Art. I, § 27.

Keeping up-to-date classifications of native wild plants, ensures that the Department and other public and private conservation organizations are targeting the appropriate species in their

conservation efforts. This will help maintain the biodiversity of ecological systems in this Commonwealth.

Compliance costs

This final-form rulemaking does not prescribe anything for a group or entity to comply with. This final-form rulemaking updates the Commonwealth's classified lists of native wild plants, updates the scientific and common names of certain native wild plant species, and updates the reference source of the nomenclature that the Department uses for native wild plant species taxonomy. There are no compliance costs associated with this final-form rulemaking.

Paperwork requirements

There will be no increase in the amount of required paperwork associated with this final-form rulemaking.

H. *Sunset Review*

The regulations will be reviewed in accordance with the sunset review schedule published by the Department to determine whether the regulations effectively fulfill the goals for which they were intended.

I. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on November 6, 2017, the Department submitted a copy of the proposed rulemaking and a copy of a Regulatory Analysis Form to IRRC and to the Chairpersons of the Senate and House Environmental Resources and Energy Committees. A copy of this material is available to the public upon request.

Under section 5(c) of the Regulatory Review Act, the Department provided IRRC and the Senate and House Committees with copies of the comments the Department received during the public comment period, as well as other documents when requested. The Department considered all comments from IRRC and the public in preparing this final-form rulemaking.

Under section 5.1(j.2) of the Regulatory Review Act (71 P.S. § 745.5a(j.2)), on October 17, 2018 the final-form rulemaking was deemed approved by the Senate and House Committees. IRRC did not comment on, make recommendations regarding, or object to any portion of the proposed rulemaking, and the Department did not make any changes to the proposed rulemaking. Thus, under section 5.1(e) of the Regulatory Review Act (71 P.S. § 745.5a(e)), IRRC met on October 18, 2018, and the final-form rulemaking was deemed approved under 5(g) of the Regulatory Review Act.

J. *Findings*

The Department finds that:

(1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201 and 1202) and regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) At least a 30-day public comment period was provided as required by law and all comments were considered.

(3) This final-form rulemaking does not enlarge the purpose of the proposed rulemaking published at 47 Pa.B. 7210.

(4) This final-form rulemaking is necessary and appropriate for administration and enforcement of the authorizing acts identified in section C of this preamble.

K. *Order*

The Department, acting under the authorizing statutes, orders that:

(a) The regulations of the Department, 17 Pa. Code Ch. 45, are amended by amending §§ 45.2, 45.3, 45.11⁶ 45.15 and 45.21 to read as set forth in Annex A.

(b) The Department shall submit this final-form regulation to the Office of General Counsel and Office of Attorney General, as required by law, for approval as to form and legality.

(c) The Department shall submit this final-form regulation to the IRRC and the Senate and House Environmental Resources and Energy Committees as required by law.

(d) The Department shall certify this final-form regulation and deposit it with the Legislative Reference Bureau, as required by law.

(e) This final-form rulemaking shall take effect upon publication in the *Pennsylvania Bulletin*.

CINDY ADAMS DUNN,
Secretary

(Editor's Note: See 48 Pa.B. 7085 (November 3, 2018) for IRRC's approval order.)

Fiscal Note: Fiscal Note 7B-08 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 17. CONSERVATION AND NATURAL RESOURCES

PART I. DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES

Subpart D. RESOURCE CONSERVATION

CHAPTER 45. CONSERVATION OF PENNSYLVANIA NATIVE WILD PLANTS

Subchapter A. GENERAL PROVISIONS

§ 45.2. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

* * * * *

Tentatively Undetermined A classification of plant species which are believed to be in danger of population decline, but which cannot presently be included within another classification due to taxonomic uncertainties, limited evidence within historical records or insufficient data.

Wild plants Naturally occurring native flora, except those commonly considered an agricultural commodity, including green and nongreen species or subspecies, variety or a part, product, seed or progeny thereof.

§ 45.3. Classified plant taxonomy.

Nomenclature used to identify species taxonomy in Subchapter B (relating to classified plants) is according to Rhoads, A. F. and Block, T. A. (2007), *The Plants of Pennsylvania An Illustrated Manual Second Edition*, Philadelphia, Pennsylvania: University of Pennsylvania Press., unless a different taxonomic source is indicated immediately following the scientific name.

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