



STATE OF WASHINGTON
DEPARTMENT OF AGRICULTURE
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Small Business Economic Impact Statement – Checklist to Determine whether a SBEIS is Required

Date: September 18, 2023
To: Official Rule File
From: Mary Fee
Subject: Proposed Amendments to Chapter 16-750 WAC, **State Noxious Weed List
And Schedule Of Monetary Penalties**

This Checklist must be completed for any rule making where a CR-102 is required; the Checklist is not required for emergency rule making or expedited rule making.

1. What are the actual changes you propose to make to the rule?

Purpose of the proposal and its anticipated effects, including any changes in existing rules:

The Washington State noxious weed list provides the basis for noxious weed control efforts for county noxious weed control boards and other entities. It also provides guidelines for the state noxious weed control board. This proposal updates the noxious weed list, adds a section regarding the WSNWCB bylaws outlining the definition of conflict of interest and procedures for board members to follow, and updates language throughout Chapter 16-750 WAC. The anticipated effects include having an effective and efficient noxious weed list and guidelines for the administration of the state noxious weed control board.

Updates to the Noxious Weed List

WAC 16-750-005 Class A Noxious Weed Changes and Additions

The addition of Palmer amaranth, *Amaranthus palmeri*

The addition of variable-leaf milfoil hybrids, *Myriophyllum heterophyllum* x *Myriophyllum*

hippuroides

WAC 16-750-011 Class B Noxious Weed Changes and Additions

Undesignating Brazilian elodea, *Egeria densa* in Green Lake in King County.

Undesignating shiny geranium, *Geranium lucidum*, in Snohomish County.

WAC 16-750-015 Class C Noxious Weed Changes and Additions

Adding European, American, and hybrid beach grasses, *Ammophila arenaria*, *A. breviligulata*, and *A arenaria x breviligulata*.

New Section WAC 16-750-137

DRAFT RULES ON CONFLICTS:

(1) When a member of the SNWCB is beneficially interested, directly or indirectly, in a contract, sale, lease, purchase or grant that may be made by, through, or is under the supervision of the SNWCB, in whole or in part, or when the member accepts, directly or indirectly, any compensation, gratuity, or reward from any other person beneficially interested in such contract, sale, lease, purchase or grant, the member shall:

(a) Recuse themselves from the SNWCB discussion regarding the specific contract, sale, lease, purchase or grant;

(b) Recuse themselves from the SNWCB vote on the specific contract, sale, lease, purchase or grant; and

(c) Refrain from attempting to influence the remaining SNWCB members in their discussion and vote regarding the specific contract, sale, lease, purchase or grant.

(2) When a board member has an interest, financial or otherwise, direct or indirect, or has engaged in a business or transaction or professional activity, or has incurred an obligation of any nature, that is in conflict with the proper discharge of that board member's official duties, including the adoption of the state noxious weed list, the member shall:

(a) Recuse themselves from the SNWCB discussion regarding the decision implicated by the board member's conflict of interest;

(b) Recuse themselves from the SNWCB vote on the decision implicated by the board member's conflict of interest; and

(c) Refrain from attempting to influence the remaining SNWCB members in their discussion and vote regarding the decision implicated by the board member's conflict of interest.

(3) Under subsection (2), a board member has an interest that is conflict with the proper discharge of their duties when the interest substantially impairs their ability to perform their duties as a board member in an objective and non-biased manner. For example, a board member has such a conflict of interest where that board member is engaged in, or has a beneficial interest in an entity that is engaged in, the commercial production of a species that is being considered for addition on the State noxious weed list.

(4) The prohibition against discussion set forth in sections (1)(a), (1)(c), (2)(a), and (2)(c) shall not prohibit the member of the SNWCB from using their general expertise to educate and provide general information on the subject area to the other members.

(6) If recusal occurs pursuant to subsection (1) or (2), the member of the SNWCB shall disclose to the public the reasons for his or her recusal from any board action whenever recusal occurs. The SNWCB staff shall record each recusal and the basis for the recusal.

(7) Under subsection (1), "any other person" has a beneficial interest in a contract, sale, lease, purchase or grant when the other person bids or otherwise seeks to be awarded the contract, sale, lease, purchase or grant.

Other administrative updates to ensure the Chapter 16-750 WAC reflects and matches RCW 17.10, and other grammatical corrections.

2. For each change, briefly identify the impacts (positive and negative).

Under RCW 17.10.080, the Washington State Noxious Weed Control Board (WSNWCB) is charged with updating the state noxious weed list on an annual basis to ensure it accurately reflects the noxious weed control priorities and noxious weed distribution. Under RCW 17.10.070, the WSNWCB is charged with adopting, amending, or repealing rules, pursuant to the administrative procedure act, chapter 34.05 RCW, as may be necessary to carry out the duties and authorities assigned to the board by this chapter.

The proposed addition of Palmer amaranth, *Amaranthus pakmeri*, and variable-leaf milfoil hybrids, *Myriophyllum heterophyllum x Myriophyllum hippuroides* as Class A noxious weeds and European, American, and hybrid beach grasses, *Ammophila arenaria*, *A. breviligulata*, and *A arenaria x breviligulata* ascl as C noxious weed species is intended to keep them from spreading from their very limited

distribution to new locations within Washington State. Noxious weeds are very invasive species that when left uncontrolled outcompete agricultural crops and native species. Noxious weed infestations negatively impact both terrestrial and aquatic habits as well as farming and grazing lands.

The designation change of shiny geranium from a class B noxious weed designated by the state for control to undesignated in Snohomish County better meets the current distribution and control requirements in Snohomish County. Similarly, undesignating Brazilian elodea in Green Lake in King County better matches the infestation density in Green Lake. Class B noxious weeds are generally designated where they are absent, limited, or pose a serious threat to health, agriculture, or natural areas so the economic impact is not unreasonable.

Additional changes include a new section regarding conflicts of interest. This section will outline the procedures for when there is a conflict of interest. This will allow for a better functioning and ethical board. Other changes include minor updates to WAC 16.750 bringing it concurrent with RCW 17.10 and clarifying language.

3. Does an exemption to the SBEIS requirement apply to all or a portion of your proposed rule? For each component of your proposed rule, answer all the following questions. Where you answer “yes,” note the applicable section(s) of your proposed rule.

- Is the rule solely for the purpose of conformity or compliance, or both, with federal statute or regulations? If yes, cite the federal statute or regulation and describe the consequences to the state if the rule is not adopted. See RCW 19.85.061.

No Yes, Explain:

- Is the rule adopting or incorporating by reference without material change federal statutes or regulations, Washington state laws, or rules of other Washington State agencies? If yes, cite the law or rule and explain any changes you propose and whether or not those changes are ‘material changes.’ See RCW 19.85.025(3)/RCW 34.05.310(4)(c).

No Yes, Explain:

- Is the rule adopting or incorporating by reference without material change national consensus codes that generally establish industry standards? If yes, what is the national consensus code? Does state law require that we adopt or follow these national consensus codes – explain and provide the state law citation? See RCW 19.85.025(3)/RCW 34.05.310(4)(c).

No Yes, Explain:

- Is the rule change only correcting typographical errors, making address or name changes, or clarifying language of a rule without changing its effect? See RCW 19.85.025(3)/RCW 34.05.310(4)(d).

No Yes, Explain: Only in some sections.

- Is the proposed rule content explicitly and specifically dictated by state law? If yes, cite the state law. See RCW 19.85.025(3)/RCW 34.05.310(4)(e).

No Yes, Explain:

- Does the proposed rule set or adjust fees or rates pursuant to legislative standards? If yes, cite the state law. See RCW 19.85.025(3)/RCW 34.05.310(4)(f).

No Yes, Explain:

- Does the rules adopt, amend, or repeal: a procedure, practice, or requirement relating to agency hearings; or a filing or related process requirement for applying to an agency for a license or permit? If yes, explain. See RCW 19.85.025(3)/RCW 34.05.310(4)(g).

No Yes, Explain:

4. Are all of the businesses impacted by the proposed rule large businesses? “Small business” means a business entity, including a sole proprietorship, corporation, partnership, or other legal entity that is owned and operated independently from all other businesses and that employs 50 or fewer employees.

No Yes Explain:

5. If any components of your proposed rule do not meet one of the exemptions listed in either number 3 or 4, you must complete the following analysis to determine whether your proposed rule will impose more than minor costs on businesses in an industry:

- List the types of businesses that will be impacted by the proposed rule.

A survey sent to potentially impacted licensed nurseries and agricultural industry associations indicated a very small proportion of the responding businesses sell plants included in the proposed rules and none of those businesses indicated the classification of those plants proposed here would result in impact due to loss of sales, revenue, or jobs.

This rule-making affects any business that own land infested with the new proposed noxious weed list species. The proposed designation changes are less restrictive and should have no effect. The proposed class A additions to the noxious weed are very limited in distribution. Most county noxious weed control programs offer assistance for class A infestation control. The proposed noxious weed additions are not required for control by the state.

- What are the costs a business will incur to comply with the proposed rule?
 - Increased licensing, inspection, or other fees? None
 - Increased costs for equipment, supplies, training? If a business owns land that contains newly class A noxious weeds, it may control the plant itself. Such a

business would incur minor costs associated with control efforts, i.e. a shovel, possible herbicide, and/or herbicide sprayer which would total less than \$100. However, most counties have programs to help control class A noxious weed species. Additionally, over the counter herbicides are readily available, relatively inexpensive, and will control most noxious weed species.

- Increased staff hours (salary and benefits)? Most land-owning businesses have established vegetation management or landscaping plans and practices. The additional costs for staff hours for weed control related to the proposed changes to the noxious weed list are expected to be minor.
- Increased reporting, record keeping, and administration? There are over the counter herbicides available for noxious weed control. However, if a business chooses to use an optional regulated herbicide, then they will be required to retain an application record consistent with laws governing use of such regulated herbicides. The application record is the responsibility of the person applying the herbicide.
- Increased costs for professional services, such as laboratory tests or veterinary services? While some land-owning businesses may choose to engage in professional services to control newly added/designated noxious weeds, it is expectation that businesses will choose the more cost-effective option of controlling the weeds themselves.
- Decreased sales or revenue? None
- Will the proposed rule impose more than minor costs on businesses? “Minor cost” means a cost per business that is less than three-tenths of one percent of annual revenue or income, or one hundred dollars, whichever is greater, or one percent of annual payroll. Explain how you determined whether or not the rule imposes more than minor costs on businesses.

No Yes Explain: Currently, class A proposed species, Palmer amaranth and variable-leaf milfoil hybrids, are limited in distribution. With the limited known distribution of these species in the state, it is expected that businesses will not incur more than minor costs to control them. Class B noxious weeds are generally designated where they are absent, limited, or pose a serious threat to health, agriculture, or natural areas so the economic impact is not unreasonable. Limited distribution is typically defined as less than 100 infested acres within a county. The class B designation changes are less restrictive and businesses will not incur more than minor costs for this change. The intent of adding class C proposed weeds, European, American, and hybrid beach grasses, is to limit new infestations and distribution to new areas. Those areas already infested with European, American, and hybrid beach grasses, are not required for control by the state, nor is it expected that county weed boards will required control. Therefor, businesses are not expected to incur more than minor costs because of this change.

The cost to control one acre of a noxious weed infestations varies depending on control method and density of the infestations. Over the counter herbicides are available for controlling noxious weed species. A typical one gallon container of herbicide will treat up to 1 to 2 acres depending on concentration of the herbicide and density of infestation. The estimated cost for over the counter herbicides and sprayer is less than \$100. Given the known distribution of noxious weeds implicated by this rule amendment, and the likelihood that most land-owning

businesses already take some action to manage vegetation on their properties, costs to comply with the proposed rule changes are expected to be minor.]

Pre-CR 101 Meeting Determination:

- 1. A SBEIS is required on the proposed rule component changes listed below:**

- 2. A SBEIS is not required on the proposed rule component changes listed below for the reasons stated:**

RCW 19.85.030(1)(a) requires that an agency prepare a small business economic impact statement (SBEIS) for proposed rules that impose more than a minor cost on businesses in an industry. An analysis of the direct economic effects of the proposed rule amendments indicates that costs to businesses would be reduced, negligible, or none at all for the two class A additions, two class B undesignation, and one class C addition to the noxious weed list.