



# PROPOSED RULE MAKING

## CR-102 (December 2017) (Implements RCW 34.05.320)

Do NOT use for expedited rule making

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STATE OF WASHINGTON  
FILED

DATE: September 21, 2022

TIME: 10:44 AM

WSR 22-19-100

**Agency:** Washington State Noxious Weed Control Board

**Original Notice**

**Supplemental Notice to WSR** \_\_\_\_\_

**Continuance of WSR** \_\_\_\_\_

**Preproposal Statement of Inquiry was filed as WSR 21-12-035 ; or**

**Expedited Rule Making--Proposed notice was filed as WSR** \_\_\_\_\_; or

**Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1); or**

**Proposal is exempt under RCW** \_\_\_\_\_.

**Title of rule and other identifying information:** (describe subject) Chapter 16-750 WAC, State noxious weed list and schedule of monetary penalties. The Washington State Noxious Weed Control Board is proposing to amend the state noxious weed list for 2023.

**Hearing location(s):**

| Date:            | Time:     | Location: (be specific)  | Comment:  |
|------------------|-----------|--|---|
| November 1, 2022 | 1:00 p.m. | WebEx<br>Phone Numbers<br>1(404)-410-4537<br>Toll Free 1(877)-312-2531<br>Meeting Access Code<br>2594 342 2821 | "Due to the mandated social distancing requirements in place during the current COVID-19 pandemic, the public hearings will be held solely over video and teleconference. " |

**Date of intended adoption:** December 1, 2022 (Note: This is **NOT** the **effective** date)

**Submit written comments to:**

Name: Mary Fee

Address: WSNWCB; P.O. Box 42560; Olympia, WA 98504-2560

Email: [mfee@agr.wa.gov](mailto:mfee@agr.wa.gov) or [noxiousweeds@agr.wa.gov](mailto:noxiousweeds@agr.wa.gov)

Fax: 360-902-2053

Other:

By (date) October 31, 2022

**Assistance for persons with disabilities:**

Contact Deanna Painter

Phone: 360-902-2061

Fax:

TTY: (800) 833-6388

Email: [dpainter@agr.wa.gov](mailto:dpainter@agr.wa.gov)

Other:

By (date) October 31st, 2022

**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 makes a few amendments to WAC 16-750-003, WAC 16-750-011, and WAC 16-750-015. Specifically, the Board is proposing:

1. WAC 16-750-003 addition of the definition of feral. Feral means where a plant species has escaped a managed landscape or is growing without human management or design. "Feral" does not include any plants grown for agricultural or commercial purposes.

2. WAC 16-750-011 Proposed Class B designation changes-
  - Common tansy, *Tanacetum vulgare*; un-designate in Lewis County.
  - Spotted knapweed, *Centaurea stoebe*: designate in Douglas County.
  - Shiny geranium, *Geranium lucidum*: un-designate in King County.
  - Scotch Thistle, *Onopordum acanthium*, designate in Douglas County.
3. WAC 16-750-015
  - Feral holly, *Ilex aquifolium*: Addition as a class C noxious weed species not including holly found in managed landscapes or where commercially or agriculturally grown.

**Reasons supporting proposal:** 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 feral holly, *Ilex aquifolium*, as a class C noxious weed species is intended to keep them from spreading from current feral infestations 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. Feral holly is known to invade riparian and sensitive areas as well as grow in forested understories.

The designation changes of common tansy, spotted knapweed, shiny geranium, and Scotch thistle are intended to better match the infestation distribution in those counties. 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.

**Statutory authority for adoption:** RCW 17.10.070, 17.10.080,

**Statute being implemented:** Chapter 17.10 RCW

**Is rule necessary because of a:**

- |                         |                              |  |
|-------------------------|------------------------------|--|
| Federal Law?            | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| Federal Court Decision? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| State Court Decision?   | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |

If yes, CITATION:

**Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:**

**Name of proponent:** (person or organization) Washington State Noxious Weed Control Board

|  |
|--|
| <input type="checkbox"/> Private                 |
| <input type="checkbox"/> Public                  |
| <input checked="" type="checkbox"/> Governmental |

**Name of agency personnel responsible for:**

|                 | Name     | Office Location                          | Phone          |
|-----------------|----------|--|----------------|
| Drafting:       | Mary Fee | 1111 Washington St SE, Olympia, WA 98504 | (360) 561-4428 |
| Implementation: | Mary Fee | 1111 Washington St SE, Olympia, WA 98504 | (360) 561-4428 |
| Enforcement:    | Mary Fee | 1111 Washington St SE, Olympia, WA 98504 | (360) 561-4428 |

**Is a school district fiscal impact statement required under RCW 28A.305.135?**  Yes  No

If yes, insert statement here:

The public may obtain a copy of the school district fiscal impact statement by contacting:  
Name:

Address:  
Phone:  
Fax:  
TTY:  
Email:  
Other:

**Is a cost-benefit analysis required under RCW 34.05.328?**

Yes: A preliminary cost-benefit analysis may be obtained by contacting:

Name:  
Address:  
Phone:  
Fax:  
TTY:  
Email:  
Other:

No: Please explain: The Washington State Noxious Control Board is not one of the agencies listed in this section.

**Regulatory Fairness Act Cost Considerations for a Small Business Economic Impact Statement:**

This rule proposal, or portions of the proposal, **may be exempt** from requirements of the Regulatory Fairness Act (see chapter 19.85 RCW). Please check the box for any applicable exemption(s):

This rule proposal, or portions of the proposal, is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Please cite the specific federal statute or regulation this rule is being adopted to conform or comply with, and describe the consequences to the state if the rule is not adopted.

Citation and description:

This rule proposal, or portions of the proposal, is exempt because the agency has completed the pilot rule process defined by RCW 34.05.313 before filing the notice of this proposed rule.

This rule proposal, or portions of the proposal, is exempt under the provisions of RCW 15.65.570(2) because it was adopted by a referendum.

This rule proposal, or portions of the proposal, is exempt under RCW 19.85.025(3). Check all that apply:

- |   |  |
|---|--|
| <input type="checkbox"/> RCW 34.05.310 (4)(b)<br>(Internal government operations) | <input type="checkbox"/> RCW 34.05.310 (4)(e)<br>(Dictated by statute)   |
| <input type="checkbox"/> RCW 34.05.310 (4)(c)<br>(Incorporation by reference)     | <input type="checkbox"/> RCW 34.05.310 (4)(f)<br>(Set or adjust fees)  |
| <input type="checkbox"/> RCW 34.05.310 (4)(d)<br>(Correct or clarify language)    | <input type="checkbox"/> RCW 34.05.310 (4)(g)<br>((i) Relating to agency hearings; or (ii) process requirements for applying to an agency for a license or permit) |

This rule proposal, or portions of the proposal, is exempt under RCW \_\_\_\_\_.

Explanation of exemptions, if necessary:

**COMPLETE THIS SECTION ONLY IF NO EXEMPTION APPLIES**

If the proposed rule is **not exempt**, does it impose more-than-minor costs (as defined by RCW 19.85.020(2)) on businesses?

No Briefly summarize the agency's analysis showing how costs were calculated. Approximately 132 businesses responded to an online survey emailed to licensed nurseries and agricultural industry associations. Seventeen businesses (12.8%) reported selling *Ilex aquifolium*, feral populations of this species are proposed for listing as a class C noxious weed. Two businesses indicated the listing would impact their business do to loss of sales, revenue, or jobs, but only minimally. Both of these business plus an additional 6 other businesses reported that they provide alternatives to holly for purchase. Additionally, the noxious weed list is separate from the WSDA quarantine lists (WAC 16-752.300, 400, 500, 600), which prohibit the sale and transport of particular species, so the proposed listing of feral holly would not prohibit the production or sale of English holly grown for foliage or for horticultural use. One business noted that if not listed then they would incur an economic loss due to feral holly invasion that is not being controlled.

Approximately, 104 (96.3%) respondents indicated that the proposed designation change for common tansy would not cost their small business any loss in revenue or jobs. Two were unsure.

Approximately, 102 (95.33%) respondents indicated that the proposed designation change for shiny geranium would not cost their small business any loss in revenue or jobs. Three were unsure.

Approximately, 106 (98.15%) respondents indicated that the proposed designation change for shiny geranium would not cost their small business any loss in revenue or jobs. One was unsure.

Approximately, 103 (95.37%) respondents indicated that the proposed designation change for shiny geranium would not cost their small business any loss in revenue or jobs. Three were unsure.

An analysis of the direct economic effects of the proposed rule amendments indicates that costs to businesses would be negligible or none at all. The proposed class C addition of feral holly will not require control at the state level. The majority of the county noxious weed boards polled indicated either an interest in educating the public, or taking no action at all about feral holly. Therefore there will be little to no cost associated with compliance with this rule making concerning feral holly. However, the Northwest Holly Growers Association has concerns that the listing of feral holly as a class C noxious weed species may impact their sales. The noxious weed list is separate from the WSDA quarantine lists (WAC 16-752.300, 400, 500, 600), which prohibit the sale and transport of particular species, so the proposed listing of feral holly would not prohibit the production or sale of English holly grown for foliage or for horticultural use. One business from the survey reported that they did not know if they sold *Ilex aquifolium*, and did indicate a \$5,000 estimated loss. The basis for this estimated loss was unclear. This ruling will not limit the sale or production of holly and should not directly impact this business.


Two Class B noxious weed designation changes are being designated for control in counties where they are either absent or limited in distribution, businesses in these counties should not be faced with more than minor costs to control those noxious weeds. Limited distribution is typically defined as less than 100 infested acres within a county. The other two designation changes are less restrictive and should not pose any costs associated with these changes.

Based upon the above analysis, the WSNWCB concludes that direct minor costs – if any – imposed would affect less than 10% of businesses and would not exceed \$100 in cost to comply as a direct result of these proposed rule-making changes. Nor would any of these amendments to the noxious weed list directly cause the creation of or loss of any jobs. The WSNWCB concludes that the proposed rule changes will not impose more than a minor cost on businesses in an industry. Therefore, a formal SBEIS is not required.

Yes Calculations show the rule proposal likely imposes more-than-minor cost to businesses, and a small business economic impact statement is required. Insert statement here:

The public may obtain a copy of the small business economic impact statement or the detailed cost calculations by contacting:

Name: Mary Fee  
Address: P.O. Box 42560; Olympia, WA 98504-2560  
Phone: 360-561-4428  
Fax: 360-902-2094  
TTY: (800) 833-6388  
Email: [mfee@agr.wa.gov](mailto:mfee@agr.wa.gov)  
Other:

|                                   |  |
|-----------------------------------|--|
| <b>Date:</b> September 21, 2022   | <b>Signature:</b><br> |
| <b>Name:</b> Mary Fee             |  |
| <b>Title:</b> Executive Secretary |  |