



PROPOSED RULE MAKING

CR-102 (July 2022) (Implements RCW 34.05.320) Do NOT use for expedited rule making

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STATE OF WASHINGTON
FILED

DATE: September 18, 2023

TIME: 9:36 AM

WSR 23-19-064

Agency: Washinton State Noxious Weed Control Board

Original Notice

Supplemental Notice to WSR _____

Continuance of WSR _____

Preproposal Statement of Inquiry was filed as WSR 23-12-066 ; 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:
October 31 st , 2023	1:00 p.m.	Coast Wenatchee Center Hotel 201 North Wenatchee Ave Wenatchee WA98801 WebEx Phone #877-312-2531 Meeting ID # 2533 433 0182	This Hearing will be held both in person and virtually through WebEx.

Date of intended adoption: November 1st, 2023 (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 or noxiousweeds@agr.wa.gov

Fax: 360-902-2053

Other:

By (date) Monday, October 30th

Assistance for persons with disabilities:

Contact Mary Fee

Phone: 360-561-4428

Fax: 360-902-2053

TTY: (800) 833-6388

Email: mfee@agr.wa.gov

Other:

By (date) Monday, October 30th

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 pakmeri*

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.

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 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.

Statutory authority for adoption: RCW 17.10.070, 17.10.080

Statute being implemented: RCW 17.10

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:

Type of proponent: Private Public Governmental

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

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 and Small Business Economic Impact Statement

Note: The [Governor's Office for Regulatory Innovation and Assistance \(ORIA\)](#) provides support in completing this part.

(1) Identification of exemptions:

This rule proposal, or portions of the proposal, **may be exempt** from requirements of the Regulatory Fairness Act (see [chapter 19.85 RCW](#)). For additional information on exemptions, consult the [exemption guide published by ORIA](#). 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 checked="" type="checkbox"/> RCW 34.05.310 (4)(b)
(Internal government operations) | <input type="checkbox"/> RCW 34.05.310 (4)(e)
(Dictated by statute) |
| <input type="checkbox"/> RCW 34.05.310 (4)(c)
(Incorporation by reference) | <input type="checkbox"/> RCW 34.05.310 (4)(f)
(Set or adjust fees) |
| <input checked="" type="checkbox"/> RCW 34.05.310 (4)(d)
(Correct or clarify language) | <input type="checkbox"/> RCW 34.05.310 (4)(g)
(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 19.85.025\(4\)](#) (does not affect small businesses).
- This rule proposal, or portions of the proposal, is exempt under RCW _____.

Explanation of how the above exemption(s) applies to the proposed rule:

(2) Scope of exemptions: *Check one.*

- The rule proposal is fully exempt (*skip section 3*). Exemptions identified above apply to all portions of the rule proposal.
- The rule proposal is partially exempt (*complete section 3*). The exemptions identified above apply to portions of the rule proposal, but less than the entire rule proposal. Provide details here (consider using [this template from ORIA](#)):

	Proposed WAC Sections and Title	This proposed rule section is <u>not exempt</u>- Analysis is required	This proposed rule section <u>is exempt</u>. Provide RCW to support this exemption.
1.	WAC 16-750-003 Definitions	<input checked="" type="checkbox"/>	RCW 34.05.310 (4)(d) Correct or Clarify Language
2.	WAC 16-750-025 Plant monitor list—Purpose	<input type="checkbox"/>	RCW 34.05.310 (4)(d)(b) Internal Government Operations
3.	WAC 16-750-005 State noxious weed list—Class A noxious weeds.	<input checked="" type="checkbox"/>	
4.	WAC 16-750-011 State noxious weed list—Class B noxious weeds.	<input checked="" type="checkbox"/>	
5.	WAC 16-750-015 State noxious weed list—Class C noxious weeds.	<input checked="" type="checkbox"/>	
6.	WAC 16-750-020 Noxious weeds—Civil infractions—Schedule of monetary penalties.	<input type="checkbox"/>	RCW 34.05.310 (4)(d) Correct or Clarify Language
7.	WAC 16-750-022 Noxious weed list—Listing process	<input type="checkbox"/>	RCW 34.05.310 (4)(d) Correct or Clarify Language
8.	WAC 16-750-100 State noxious weed control board—Description—Purpose	<input type="checkbox"/>	RCW 34.05.310 (4)(d) Correct or Clarify Language
9.	WAC 16-750-115 State noxious weed control board—Membership	<input type="checkbox"/>	RCW 34.05.310 (4)(b) Internal Government Operations
10.	WAC 16-750-120 State noxious weed control board—Nominations—Elections—Terms of office—Vacancies	<input type="checkbox"/>	RCW 34.05.310 (4)(b) Internal Government Operations
11.	WAC 16-750-130 State noxious weed control board—Organization	<input type="checkbox"/>	RCW 34.05.310 (4)(b) Internal Government Operations
12.	WAC 16-750-135 State noxious weed control board—Meetings	<input type="checkbox"/>	RCW 34.05.310 (4)(b) Internal Government Operations
13.	WAC 16-750-137 State noxious weed control board- Conflict of Interest	<input type="checkbox"/>	RCW 34.05.310 (4)(b) Internal Government Operations
14.	WAC 16-750-140 State noxious weed control board—Committees	<input type="checkbox"/>	RCW 34.05.310 (4)(d) Correct or Clarify Language
15.	WAC 16-750-142 State noxious weed control board—Executive secretary and education specialist—Hiring and dismissal	<input type="checkbox"/>	RCW 34.05.310 (4)(d) Correct or Clarify Language

16	WAC 16-750-145 State noxious weed control board—Executive secretary—Definition		RCW 34.05.310 (4)(b) Internal Government Operations
17	WAC 16-750-146 State noxious weed control board—Education specialist—Definition		RCW 34.05.310 (4)(b) Internal Government Operations
18	WAC 16-750-165 State noxious weed control board—Budget and finances		RCW 34.05.310 (4)(d) Correct or Clarify Language

The rule proposal is not exempt (*complete section 3*). No exemptions were identified above.

(3) Small business economic impact statement: *Complete this section if any portion is not exempt.*

If any portion of 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 minor cost analysis and how the agency determined the proposed rule did not impose more-than-minor costs. Approximately 173 businesses responded to an online survey emailed to licensed nurseries and agricultural industry associations. Three businesses (1.78%) reported selling class A proposed Palmer amaranth, *Amaranthus pakmeri* but indicated the listing would have no impact on their business do to loss of sales, revenue, or jobs. Five businesses (2.96%) were not sure and 161 (95.27%) reported not selling Palmer amaranth at all.

One business reported selling class B proposed addition variable-leaf milfoil hybrids, *Myriophyllum heterophyllum x Myriophyllum hippuroides* but indicated the listing would have no impact on their business do to loss of sales, revenue, or jobs. Three (1.74%) businesses were not sure and 168 (97.68%) reported not selling milfoil hybrids.

Four businesses (2.35%) reported selling class C proposed addition European, American, and hybrid beach grasses, *Ammophila arenaria*, *A. breviligulata*, and *A. arenaria x breviligulata* but only 1 indicated the listing would have some impact on their business do to loss of sales, revenue, or jobs however did not specify an amount. Additionally, 4 businesses indicated that they do sell one or more comparable species. Four (2.35%) businesses were unsure if they sold the proposed beach grasses and 163 (95.32%) do not sell the species.

One business reported selling shiny geranium and indicated the listing change would have no negative impact on their business do to loss of sales, revenue, or jobs.

Additionally, 73.38% of the businesses indicated that they are considered a small business as defined by RCW 19.85.020 and 20.13% were not sure.

This rule would require the control of class A noxious weed species. The proposed class A addition variable-leaf milfoil hybrids, *Myriophyllum heterophyllum x Myriophyllum hippuroides* will help protect areas from becoming infested and require control of limited infestations. Palmer amaranth, *Amaranthus pakmeri* is also being proposed as class A addition. There are only two known infestations of Palmer amaranth in Washington state. This classification will require control of known infestations and protect areas from being infested.

European, American, and hybrid beach grasses, *Ammophila arenaria*, *A. breviligulata*, and *A. arenaria x breviligulata* are being proposed as class C additions. These beach grasses are in limited in distribution along parts of the Washington coast and Puget Sound. This addition helps protect those areas of limited distribution. Class C noxious weed species are not designated for required control at the state level.

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 two new class A noxious weed additions are required for control throughout Washington state but are very limited in distribution. The new class C noxious weed addition is not required for control by the state and the designation changes for shiny geranium and Brazilian elodea are less restrictive. Businesses 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.

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 businesses will not be disproportionately impacted, nor would the proposed rule changes impose more than a minor cost on businesses in an industry. Therefore, we conclude that 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 the required small business economic impact 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

Other:

Date: September 13th, 2023

Name: Mary Fee

Title: Executive Secretary

Signature:

