

FORM OF ORDER AND TRANSMITTAL BY AGENCY HAVING SINGLE HEAD

State of Washington

Department of Agriculture
(agency name)

Administrative Order No. 1963

(1) I, C. Alan Pettibone, director of Washington State Department of Agriculture, do promulgate and adopt at Olympia, WA (place)

the annexed rules relating to: Chapter 16-752 rules relating to the noxious weeds grant program.

(2) ALTERNATIVE A. Use only for Adoption of Permanent Rules.

This action is taken pursuant to Notice No. WSR 87-24-069 filed with the code reviser on 12/2/87. These rules shall take effect: [x] thirty days after they are filed with the code reviser pursuant to RCW 34.04.040(2). [] at a later date, such date being

(2) ALTERNATIVE B. Use only for Adoption of Emergency Rules.

I, find that an emergency exists and that this order is necessary for the preservation of the public health, safety, or general welfare and that observance of the requirements of notice and opportunity to present views on the proposed action would be contrary to public interest. A statement of the facts constituting the emergency is:

These rules are therefore adopted as emergency rules to take effect upon filing with the code reviser.

(3) Pursuant to the requirements of RCW 34.04.026 that "every agency shall incorporate the most specific, but in no case omit all, of the following language alternatives when adopting or amending rules" fill in statement (a), (b), or (c) as appropriate:

[x] (a) This rule is promulgated pursuant to RCW 17.10 RCW and is intended to administratively implement that statute.

[] (b) This rule is promulgated pursuant to RCW which directs that the

(agency) has authority to implement the provisions of

(name of act or RCW citation)

[] (c) This rule is promulgated under the general rule-making authority of the (agency)

as authorized in RCW

(4) The undersigned hereby declares that the agency has complied with the provisions of the Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.04 RCW) and the State Register Act (chapter 34.08 RCW) in the adoption of these rules.

(5) This order, after being first recorded in the order register of this agency, is herewith transmitted to the Code Reviser for filing pursuant to chapter 34.04 RCW and chapter 1-12 WAC.

APPROVED AND ADOPTED STATE OF WASHINGTON FILED

January 29 19 88

By C. Alan Pettibone

Director

Title

JAN 29 1988

[Form CR-7: Rev. 7/23/82]

CODE REVISER'S OFFICE

WSR 88-04-044

AMENDATORY SECTION (Amending Order 1907, filed 9/16/86)

WAC 16-752-001 DEFINITIONS. The definitions set forth in this section shall apply throughout this chapter, unless the context otherwise requires:

(1) "Director" means the director of agriculture of this state, or a duly authorized representative.

(2) "Department" means ((any individual, partnership, corporation, firm, or any other entity)) the Washington state department of agriculture.

(3) "Person" means any individual, partnership, corporation, association, agency, or organized group of persons whether or not incorporated.

(4) "Hay" means the harvested herbage of forage plants, including but not limited to grasses, legumes, sedges and rushes.

(5) "State board" means the Washington state noxious weed control board.

(6) "Abstract" means a concise summary of the main parts of a noxious weed control project.

(7) "Applicant" means a project sponsor.

(8) "BARS" means the budgeting, accounting, and reporting system of municipal fiscal management.

(9) "Environmental checklist" means the form in WAC 197-11-960.

(10) "Executive secretary" means the state noxious weed control board executive secretary.

(11) "Intangible benefits" means those benefits lacking physical form including but not limited to goodwill, increased public awareness, and aesthetic improvements.

(12) "Intangible costs" means those costs lacking physical form including but not limited to ill will, decreased public enjoyment, reduced aesthetics.

(13) "Integrated pest management" means a decision-making process which combines all feasible control techniques into a program for managing targeted noxious weeds including but not limited to prevention, monitoring, consideration of alternative methods, and evaluation.

(14) "Local noxious weed control agency" means any activated county or regional noxious weed control board created under chapter 17.10 RCW, any weed district created under chapter 17.04 RCW, or any intercounty weed district created under chapter 17.06 RCW.

(15) "Monitoring" means inspecting to gather and record site specific information on which decisions about treatment choices are to be based.

(16) "Objectives" means statements of precise outcomes which can be measured to determine actual accomplishments.

(17) "Principle investigator" means the person under whose direction the noxious weed control project will be carried out such as the county weed control supervisor or county weed control board chairperson.

(18) "Project sponsor" means the county legislative authority of a county with an activated noxious weed control board, a local weed control agency, or a combination of two or more agencies acting through a lead agency, responsible for implementing an approved project.

(19) "Public benefits" means those services, goods, or other benefits, whether tangible or intangible, which accrue to persons other than those on whose property weed control measures pursuant to this chapter are undertaken.

(20) "Public costs" means those costs, whether tangible or intangible, which accrue to persons other than those on whose property weed control measures pursuant to this chapter are undertaken.

(21) "Significant environmental harm" means a reasonable likelihood of more than a moderate adverse impact on environmental quality as set forth in WAC 197-11-794.

(22) "Tangible benefits" means those benefits possessing physical form, whether monetary or nonmonetary, including but not limited to public health and safety enhancement, environmental enhancement, and cost savings on consumer goods.

(23) "Tangible costs" means those costs possessing physical form, whether monetary or nonmonetary, including but not limited to public health and safety degradation, environmental degradation cost increases on consumer goods.

NEW SECTION

MAC 16-752-115 NOXIOUS WEEDS GRANT PROGRAM--PURPOSE. The purpose of the noxious weeds grant program is to control and prevent noxious weed infestations that pose a potential economic or environmental threat to the state by funding projects with comprehensive control strategies that are well planned, documented, and specific to targeted weed species.

NEW SECTION

MAC 16-752-120 NOXIOUS WEEDS GRANT PROGRAM--FORMS. The director with advice from the state board may prescribe forms for grant applications, project reports, financial reports, contracts or any other activity conducted pursuant to this section, and may require additional information or documentation as needed.

NEW SECTION

MAC 16-752-125 NOXIOUS WEEDS GRANT PROGRAM--WHO MAY APPLY. The legislative authority of any county with an activated county noxious weed control board, or the board of any local weed control agency may apply for noxious weed control grant program funds if such applicant employs adequate administrative personnel to supervise the proposed project for the duration of such project.

NEW SECTION

MAC 16-752-130 NOXIOUS WEEDS GRANT PROGRAM--APPLICATION PROCEDURE. (1) The department shall specify funding cycles, and application and reporting deadlines as necessary, and shall give reasonable notice in writing and shall send by regular mail to the legislative authority of each county with an activated county noxious weed control board and each local weed control agency notice of such cycles and deadlines.

(2) The applicant may request assistance from the state board executive secretary or from the department in completing the application. The state board executive secretary and the department may provide such assistance subject to the availability of staff and funds for this purpose.

(3) The state board may reject or refer back to the applicant those applications which it finds are:

- (a) Insufficiently documented; or
- (b) Incomplete; or
- (c) Inadequate; or
- (d) Postmarked after the deadline.

NEW SECTION

WAC 16-752-135 NOXIOUS WEEDS GRANT PROGRAM--CONTENT OF GRANT APPLICATION. Applications for grants shall include, but not be limited to, the following information:

- (1) The legal name and address of the organization to whom the award should be made;
- (2) The scientific name of targeted noxious weed species;
- (3) The weed classification status;
- (4) The project title and status (new or renewal);
- (5) The amount of money being requested from the state;
- (6) The estimated length of the project and the starting and ending dates;
- (7) The name, business address, and telephone number of the principle investigators;
- (8) The type of performing organization;
- (9) The signature of the principle investigator;
- (10) The abstract, not to exceed one page, which summarizes the main parts of the project;
- (11) Background information which demonstrates the applicant's familiarity with similar projects;
- (12) The objectives of the project;
- (13) The statement of the approach and procedures to be used to accomplish objectives. This section of the proposal shall describe how the applicant plans to approach the problem and indicate the method the applicant will employ to accomplish the objective;
- (14) A description of actual project activity, utilization of personnel, and compilation of data including the following:
 - (a) The precise location of the area affected by the project;
 - (b) The known distribution of the weed species outside the project area;
 - (c) The number of acres encompassed by project area;
 - (d) The number of acres infested by the targeted noxious weed species;
 - (e) The type of land affected in the project area including but not limited to cropland, rangeland, pasture, urban/industrial, transportation rights-of-way, or forest;
 - (f) A designation of the land within the project areas expressed as percent including but not limited to public land, federal land, tribal land, state land, or private land;
 - (g) A description of the agricultural and nonagricultural uses of the project area;
- (15) A projected breakdown of the work to be accomplished on a monthly basis during the funding period;
- (16) A budget consistent with the BARS format which indicates revenues and expenditures by source;
- (17) A quarterly expenditure plan;
- (18) A list of any in-kind contributions committed to the proposed project;
- (19) If the project is sponsored by several agencies, a draft copy of the interlocal cooperation agreement, memorandum of understanding, or other contract showing the relationship and responsibilities of the agencies;
- (20) A statement that the project sponsor will enter into a contract with the department for utilization of grant program funds upon approval of the application.

NEW SECTION

WAC 16-752-140 NOXIOUS WEEDS GRANT PROGRAM--APPLICATION EVALUATION--RANKING AND NOTICE OF ACCEPTANCE OR REJECTION OF APPLICATION. (1) The state board shall review, evaluate, assign points to, and rank each application according to the criteria contained in WAC 16-752-

145: PROVIDED, That board members who are also officials of the project sponsor shall not be eligible to rank that project sponsor's application.

(2) First priority in funding will be given to class "A" and class "B" noxious weed species: PROVIDED, That the minimal acceptable standards set forth in WAC 16-752-145(2) are met.

(3) Each state board member shall independently evaluate and score each application according to WAC 16-752-145(3), after which the state board shall discuss the applications and review the scores. During such discussions, any state board member may change her or his scores. Following the review, the sum of the individual state weed board member scores for each application shall be determined and divided by the number of members scoring the application. This product shall constitute the board's score for the application. The applications thus scored shall be ranked from highest to lowest score.

(4) The results of the state board's scores and ranking shall be submitted to the director for final scoring, ranking, and acceptance or rejection of the application: PROVIDED, That in scoring applications, the director shall use the same criteria as that used by the state board and shall consult with the state board prior to any change in an applicant's rank.

(5) The department shall give notice to each applicant in writing and send by regular mail notice of the action taken on their application. Such notice shall include the applicant's final score and ranking among the applications considered during that cycle.

NEW SECTION

WAC 16-752-145 NOXIOUS WEEDS GRANT PROGRAM--EVALUATION CRITERIA.

(1) The state board shall evaluate each application to determine if it meets all the minimal acceptable standards set forth in subsection (2) of this section. Any application which does not meet these standards shall be rejected and no further consideration shall be given to the application.

(2) The minimal acceptable standards are as follows:

(a) The proposed method of control is technically feasible;

(b) The project provides public benefits in excess of public costs;

(c) The project will not cause significant environmental harm.

(3) Any application which meets all of the minimal acceptable standards shall be assigned points by the state board for each of several specific scientific, technical, economic, and environmental measures established by the state board.

NEW SECTION

WAC 16-752-150 NOXIOUS WEEDS GRANT PROGRAM--LEGAL REQUIREMENTS.

(1) Noxious weed control projects carried out pursuant to this chapter shall be subject to all applicable laws and rules including but not limited to the provisions of the State Environmental Policy Act, chapter 43.21C RCW, the Water Pollution Control Act, chapter 90.48 RCW, the Washington Pesticide Control Act, chapter 15.58 RCW, and the Washington Pesticide Application Act, chapter 17.21 RCW.

(2) Decisions by the department to reject noxious weed control grant requests shall be subject to an informal appeals process set forth as follows:

(a) The applicant has ten days from the date a notice of rejection is received from the department to file a request for an informal hearing;

(b) The requests for an informal hearing shall be in writing and shall be sent by certified mail to the state board executive secretary;

(c) Upon receipt of the request for an informal hearing, the state board executive secretary shall immediately notify the state board chairperson of the request;

(d) The state board chairperson shall then appoint a four-person appeal committee which shall consist of one state board member representing the agricultural community, one state board member representing the scientific community, one state board member representing the public interest, and a representative of the department;

(e) On the advice of the state board chairperson, the state board executive secretary shall schedule an informal hearing which shall be held the evening before the regularly scheduled state board meeting;

(f) The state board executive secretary shall notify the applicant and the appeal committee of the date, place, and time of said informal hearing;

(g) Based on the evidence presented by the applicant, the appeal committee shall make a recommendation to the state weed board at the regular meeting to either uphold the department's original decision or request that the state weed board make a recommendation that the grant application in question be approved for funding by the department;

(h) The state board shall vote to either accept or reject the appeal committee recommendation;

(i) The director shall have five working days from receiving a recommendation from the state board to make a final decision;

(j) The department shall notify the state weed board and the applicant of the final decision in writing within five working days.

NEW SECTION

WAC 16-752-155 NOXIOUS WEEDS GRANT PROGRAM--PROJECT MONITORING, EVALUATION AND REPORTING. (1) The principle investigator shall monitor the progress of the project; evaluate the effects of the project; account for all project funds and expenditures; and submit an annual report of its findings to the department and state board.

(2) The department shall conduct financial, compliance, or performance audits as necessary to review project accounting, ensure program compliance, and determine project efficiency and effectiveness.

(3) If the department determines that the project's progress effectiveness or fiscal management is deficient, the department may take one or more of the following actions:

(a) Advise the project sponsor in writing of the deficiency and direct the necessary corrective action;

(b) Suspend the project for a period of not more than sixty days during which time the department shall evaluate the project and determine what, if any, corrective action shall be taken to correct the deficiency: PROVIDED, That the department shall notify the project sponsor by certified mail of such suspension and shall forward a copy of such notice to the state board;

(c) Terminate the project: PROVIDED, That the department shall consult with the state weed board before termination of a project.

NEW SECTION

WAC 16-752-160 NOXIOUS WEEDS GRANT PROGRAM--BILLING OF EXPENSES. Billable project expenses shall be submitted to the department each quarter accompanied by a completed financial report. All payments

shall be contingent on funds appropriated by the legislature and made available for this purpose.

NEW SECTION

WAC 16-752-165 NOXIOUS WEEDS GRANT PROGRAM--RECORDS RETENTION, FINAL REPORT, UNUSED ALLOCATED MONEYS. (1) Grant program records shall be retained by the project sponsor and a copy forwarded to the department and the executive secretary upon project completion or termination.

(2) The project sponsor shall submit a financial statement within thirty days and a final report within one hundred eighty days of the completion or termination of a project to the department and the executive secretary which shall include:

- (a) A brief listing of the primary objectives of the project;
 - (b) The results of the project summarized according to project objectives;
 - (c) A summary of the public benefits accrued to the state as a result of the project;
 - (d) An itemized accounting of all grant moneys spent consistent with the BARS format.
- (3) Unused allocated grant moneys shall be returned to the state grant fund within thirty days of the termination of a project: PROVIDED, That unused allocated moneys shall be returned no later than thirty days before the end of the biennium.

NEW SECTION

WAC 16-752-170 NOXIOUS WEEDS GRANT PROGRAM--EMERGENCIES. Nothing in this chapter shall prevent the use of available noxious weed grant funds when it is determined by the director with advice of the state board that a noxious weed emergency exists.

NEW SECTION

WAC 16-752-200 EMERGENCY NOXIOUS WEEDS GRANT PROGRAM--PURPOSE. (1) The purpose of the following rules are to provide emergency assistance to local noxious weed control agencies who received state noxious weed control grant funds between July 1, 1986, and June 30, 1987, and whose noxious weed control program would be seriously impaired without such funds.

(2) Definition. "Local agency" means any activated county noxious weed control board, weed district, or intercounty weed district.

NEW SECTION

WAC 16-752-201 EMERGENCY NOXIOUS WEEDS GRANT PROGRAM--ALLOTMENT. One hundred thousand dollars or so much thereof as may be necessary shall be distributed as provided in this chapter.

NEW SECTION

WAC 16-752-202 EMERGENCY NOXIOUS WEEDS GRANT PROGRAM--APPLICATION. (1) The legislative authority of any county with an activated county noxious weed control board, or board of any weed district which received and utilized state grant funds between July 1, 1986, and June 30, 1987, may apply to the director for grant funds pursuant to this chapter.

(2) Each applicant shall employ adequate administrative personnel to supervise an effective weed control program.

(3) No requests shall exceed the total amount of state noxious weed control grant funds requested and utilized by the applicant local agency between July 1, 1986, and June 30, 1987.

(4) Funds allocated under this chapter and not expended by June 30, 1988, shall revert to the department.

NEW SECTION

WAC 16-752-203 EMERGENCY NOXIOUS WEEDS GRANT PROGRAM--REQUIREMENTS. (1) Moneys from the emergency noxious weeds grant fund shall be used solely for the purchase of materials and/or biological control agents by one of the following methods:

(a) Direct purchase by a local agency for application by the agency or for distribution to landowners;

(b) Reimbursement to local agencies of local moneys paid to landowners following the landowner's purchase or application of materials or biological control agents: PROVIDED, That no local agency shall be reimbursed for any weed control activities performed prior to December 15, 1987.

(2) Moneys from the emergency noxious weeds grant fund shall not be used for the application costs of materials or biological control agents whether applied by the local agency, landowner, or commercial applicator.

(3) All activities carried out under the emergency noxious weeds grant program shall comply with Washington Pesticide Application Act, chapter 17.21 RCW, Washington Pesticide Control Act, chapter 15.58 RCW, and any rules promulgated under these chapters. For those local agencies which choose to purchase materials directly for distribution to landowners, this shall include but not be limited to, the local agency obtaining a pesticide dealer license and the supervisor or other representative of the local agency obtaining a pesticide dealer manager license.

(4) Moneys from the emergency noxious weeds grant fund shall be used only on those weeds which are on the noxious weed list, WAC 16-750-010.

(5) All recipients shall employ approved crop/pasture/range management and weed control practices on those lands for which assistance is received.

(6) Each landowner participating in the program shall complete an application and crop/pasture/range management agreement prior to receiving state assistance to control noxious weeds. Upon completion of treatment, each landowner participating in the program shall file a certification of completion of treatment with the local agency. These records shall be maintained by the local agency as part of its permanent state noxious weed control grant program record. Individual local agencies shall be responsible for developing forms to meet this requirement and such forms shall contain substantially the same information as that contained in the department form, "application for assistance to control noxious weeds." A sample of each form used by a local agency in conjunction with this program shall be submitted to the department prior to any payment by the department.

(7) Records.

(a) Those local agencies which purchase materials or biological control agents directly for distribution to landowners shall maintain records on the quantity and value of materials and agents distributed to each landowner.

(b) Those local agencies which reimburse landowners following the landowner's purchase of materials or biological control agents shall retain a copy of the invoice showing the landowner's name, the date of purchase, the material and agents purchased, and the quantity and value of that purchase.

(c) The records specified in (a) and (b) of this subsection shall be maintained by the local agency as part of its permanent state noxious weed control grant program record.

(8) Each local agency shall develop an inspection plan to ensure landowner compliance with the provisions of this chapter. Such inspection plan shall include inspecting not less than twenty percent of the treated properties in any one year. If after inspection, any landowner shall be found not in compliance with the provisions of this program, the local agency shall immediately notify the department and shall withhold any outstanding payment to this landowner until such payment is approved by the department.

NEW SECTION

WAC 16-752-204 EMERGENCY NOXIOUS WEEDS GRANT PROGRAM--PAYMENT.

(1) One signed original copy of the memorandum of understanding between the local agency and the department shall be submitted to the department on or before June 27, 1988, and prior to payment by the department. A second signed original copy shall be maintained as a part of the local agency's permanent noxious weed control grant program record.

(2) Requirements for payment by the department are as follows:

(a) Those local agencies that purchase materials or biological control agents directly shall be required to submit to the department a bill of sale showing the name and address of the vendor, the name of the material, the amount purchased and the cost along with a completed state invoice, Form A-19, prior to payment by the department. Additionally, on or before July 7, 1988, a noxious weed control program report summarizing all program control activities conducted during the term of the agreement shall be completed and submitted to the department.

(b) Those local agencies that reimburse landowners following the purchase or application of materials or biological control agents shall be required to complete a noxious weed control program report summarizing the control activities conducted to date along with each completed state invoice, Form A-19, prior to payment by the department. Additionally, on or before July 7, 1988, a noxious weed control program report summarizing all program control activities conducted during the term of the agreement shall be completed and submitted to the department.

(3) State invoices, Form A-19, submitted for payment shall be received by the department no later than July 7, 1988.

(4) Failure to submit the required forms within the times specified may delay or eliminate payment.