

WSR 21-01-206

PROPOSED RULES

DEPARTMENT OF AGRICULTURE

[Filed December 23, 2020, 7:48 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-13-093.

Title of Rule and Other Identifying Information: Chapter 16-752 WAC, Noxious weed seed and plant quarantine. As a result of petitions received from the Washington state noxious weed control board (WSNWCB) and the Washington state department of ecology (DOE), the department is proposing to add additional species to the noxious weed seed and plant quarantine, which would prohibit their sale and distribution. These species include: Italian arum (*Arum italicum*); Ravenna grass (*Tripidium ravennae*); spurge laurel (*Daphne laureola*); myrtle spurge (*Euphorbia myrsinites*); annual bugloss (*Lycopsis arvensis*); yellow flag iris (*Iris pseudacorus*); hoary alyssum (*Berteroa incana*); small-flowered jewelweed (*Impatiens parviflora*); South American spongeplant (*Limnobium laevigatum*); tree-of-heaven (*Ailanthus altissima*); and poison hemlock (*Conium maculatum*). The department is also proposing to add American spongeplant (*Limnobium spongia*) to the noxious weed seed and plant quarantine, as well as updating the accepted scientific names of several plants that are currently quarantined.

Hearing Location(s): On January 26, 2021, at 9:00 a.m., Skype Conference Line. Join Online: <https://lync.wa.gov/agr.wa.gov/meet/grobinson/77GFSGDC>. Join by phone 360-407-3816, Conference ID: 86838. Due to the mandated social distancing requirements in place during the current COVID-19 pandemic, the public hearing will be held solely over video and teleconference.

Date of Intended Adoption: February 3, 2021.

Submit Written Comments to: Gloriann Robinson, Agency Rules Coordinator, P.O. Box 42560, Olympia, WA 98504-2560, email wsdarulescomments@agr.wa.gov, fax 360-902-2092, by 5:00 p.m., January 26, 2021.

Assistance for Persons with Disabilities: Deanna Painter, phone 360-902-2061, TTY 800-833-6388 or 711, email dpainter@agr.wa.gov, by January 19, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Adding these species to the list of regulated articles in the noxious weed seed and plant quarantine is necessary to meet the primary legislative directive set out in chapters 17.10 and 17.24 RCW, of protecting Washington's environment and agricultural resources by using quarantines to provide a strong system for the exclusion of plant pests.

Most of the species listed in the quarantine are also listed in chapter 16-750 WAC, state noxious weed list, administered by WSNWCB, as a Class A or a Class B noxious weed. This means they require mandatory control by county weed boards. However, designation as a noxious weed on the state noxious weed list doesn't prohibit its sale, allowing consumers to buy a plant species that the county weed board is actively controlling. Adding these plants to the noxious weed seed and plant quarantine will prohibit them from being sold in Washington. This will help support the efforts of county weed boards to control noxious weeds. Prohibiting these species from sale or distribution would support the work of the Washington state department of natural resources (DNR) and county weed boards who have spent large amounts eradicating some of these species from Washington's watersheds and na-

tive lands. By adding the proposed species to the quarantine list, Washington's agricultural lands, ecosystem and wildlife habitats will be more protected against the threat these invasive nonnative species pose.

Under the proposed amendment, these plant species could no longer be sold or distributed in Washington state. Nurseries that do so would be required to destroy the plants, return them to an out-of-state source, or dispose of the plants to avoid infestation.

Updating the scientific names by which quarantined species are identified will ensure consistency with recent national taxonomic standards and with the scientific names referenced in chapter 16-750 WAC, state noxious weed list. This component of the amendment is being proposed to ensure that the rule is current and up-to-date with the use of those accepted names.

Reasons Supporting Proposal: The department has received three petitions for rule making to add eleven species to the quarantine list. Some of these eleven species are already considered Class A noxious weeds by WSNWCB. Others are not yet found in the state but are at high risk for establishment according to pest risk assessments conducted by the United States Department of Agriculture (USDA). One additional species (American spongeplant) is being added due to it being so closely related to the petitioned species South American spongeplant.

Washington agriculture, environmental quality, and natural resources, including waters and wetlands, are threatened by nonnative, aggressive species of noxious weeds. A number of these noxious weeds are transported and sold within the state both as nursery plants and as seeds in packets of flower[s] or "wildflower mixes." Subsequent "escape" of these ornamentals has been a documented source of a number of infestations and resulted in large public and private expenditures by landowners, land managers, weed boards, and weed districts, as well as the department, to achieve mandated control. The quarantine regulates the transport, buying, selling, offering for sale, or distribution of these plants or plant parts into or within the state of Washington. The quarantine also applies to online sales of plants that are being shipped into Washington. Almost all types of plants, including invasive species, can be found for sale online. Adding these species to the quarantine list prohibits them from being offered for sale online or sold in Washington state.

Updating scientific names by which to identify quarantined species will provide clarity and consistency for stakeholders and the nursery industry. This is a clerical change, as all of the species affected are already being regulated.

Statutory Authority for Adoption: RCW 17.10.074, 17.24.011, and 17.24.041.

Statute Being Implemented: Chapters 17.10 and 17.24 RCW.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: WSNWCB, DOE, and Washington state department of agriculture (DOA), governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Cindy Cooper, 1111 Washington Street, Olympia, WA 98504, 360-870-5069.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. DOA is not a listed agency under RCW 34.05.328 (5) (a) (i).

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

Explanation of exemptions: The department is proposing to update the scientific name of nine plant species already on the quarantine list. Updating the scientific name by which we identify prohibited species will ensure consistency with recent national taxonomic standards and with the scientific names referenced in chapter 16-750 WAC, state noxious weed list. This is solely a clerical change as all of the species affected are already being regulated. WAC 16-752-610 states that the "regulated status also applies to all synonyms of these botanical names ... " Therefore, the acceptable scientific name at any one point does not affect the quarantine status of that plant. Updating the scientific name falls under the exemption specified in RCW 19.85.025(3)/34.05.310 (4) (d) because the amendment is simply clarifying language of a rule without changing its effect.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The department is proposing to add twelve species of plants to the noxious weed seed and plant quarantine. All businesses selling plants in Washington state are required to obtain a nursery dealer's license. Two surveys were sent to licensed nursery dealers within the state to determine the economic impact of the proposed amendment to add additional plant species to the quarantine list. A total of six hundred ninety-four businesses responded to the surveys. Of those businesses that responded, nineteen stated they sell one or more of the plant species proposed for quarantine. The quarantine would prohibit the sale or distribution of the plant species (including any parts capable of propagation). Anyone currently selling these species could see a decrease in sales or revenue. The decrease in sales or revenue reported from survey participants ranged from \$23 to \$850. Minor cost thresholds ranged from \$935.27 to \$32,786.78 for these same businesses. A comparison of the minor cost threshold for each industry by their NAICS code resulted in none of the losses in sales or revenue exceeding the minor cost threshold for that industry type.

A copy of the detailed cost calculations may be obtained by contacting Gloriann Robinson, Agency Rules Coordinator, P.O. Box 42560, Olympia, WA 98504-2560, phone 360-902-1802, fax 360-902-2092, TTY 800-833-6388, email wsdarulescomments@agr.wa.gov.

December 23, 2020
Brad White
Assistant Director

OTS-2799.2

AMENDATORY SECTION (Amending WSR 16-14-003, filed 6/23/16, effective 7/24/16)

WAC 16-752-610 Regulated articles. All plants, plant parts, and seeds in packets, blends, and "wildflower mixes" of the following listed species are designated as regulated articles under the terms of this noxious weed seed and plant quarantine. This list is comprised of the most recent and accepted scientific and common names of the quarantine plant species. Regulated status also applies to all synonyms of these botanical names and interspecies hybrids if both parents are regulated species:

Scientific Name	Common Names
<i>Abutilon theophrasti</i>	velvetleaf
<i>Ailanthus altissima</i>	<u>tree-of-heaven</u>
<i>Alliaria petiolata</i>	garlic mustard
<i>Amorpha fruticosa</i>	indigobush, lead plant
<i>Anchusa officinalis</i>	common bugloss, alkanet, anchusa
<i>Anthriscus sylvestris</i>	wild chervil
<i>Arum italicum</i>	<u>Italian arum</u>
<i>Arundo donax</i> (except variegated cultivars)	giant reed
<i>Bassia scoparia</i> (syn. <i>Kochia scoparia</i>)	<u>kochia, summer-cyprus, burning-bush, fireball, Mexican fireweed</u>
<i>Berteroa incana</i>	<u>hoary alyssum</u>
<i>Brachypodium sylvaticum</i>	false brome
<i>Buddleia davidii</i> (except accepted sterile cultivars)	butterfly bush
<i>Butomus umbellatus</i>	flowering rush
<i>Cabomba caroliniana</i>	fanwort
<i>Carduus acanthoides</i>	plumeless thistle
<i>Carduus nutans</i>	musk thistle, nodding thistle
<i>Carduus pycnocephalus</i>	Italian thistle
<i>Carduus tenuiflorus</i>	slenderflower thistle
<i>Centaurea calcitrapa</i>	purple starthistle
<i>Centaurea diffusa</i>	diffuse knapweed
<i>Centaurea jacea</i>	brown knapweed, rayed knapweed, brown centauray horse-knobs, hardheads
(<i>Centaurea jacea</i> x <i>nigra</i>)	meadow knapweed
<i>Centaurea stoebe</i>	spotted knapweed)
<i>Centaurea macrocephala</i>	bighead knapweed
<i>Centaurea nigra</i>	black knapweed
<i>Centaurea nigrescens</i>	Vochin knapweed
<i>Centaurea stoebe</i>	<u>spotted knapweed</u>

Scientific Name	Common Names
<i>Centaurea x gerstlaueri</i> (syn. <i>Centaurea jacea x nigra</i>) (<i>Chaenorhinum</i>)	<u>meadow knapweed</u>
<i>Chaenorhinum minus</i>	dwarf snapdragon
<i>Clematis orientalis</i>	oriental clematis
<i>Conium maculatum</i>	<u>poison hemlock</u>
<i>Crassula helmsii</i>	Australian swamp stonecrop
<i>Crupina vulgaris</i>	common crupina
<i>Cyperus rotundus</i>	purple nutsedge
<i>Cytisus scoparius</i>	Scotch broom
<i>Daphne laureola</i>	<u>spurge laurel</u>
<i>Daucus carota</i>	wild carrot, Queen Anne's lace
<i>Echium vulgare</i>	blueweed, blue thistle, blue devil, viper's bugloss, snake flower
<i>Egeria densa</i>	Brazilian elodea
<i>Epilobium hirsutum</i>	hairy willow herb
((<i>Euphorbia esula</i>	leafy spurge))
<i>Euphorbia myrsinites</i>	<u>myrtle spurge</u>
<i>Euphorbia oblongata</i>	eggleaf spurge
<i>Euphorbia virgate</i> (syn. <i>Euphorbia esula</i>)	<u>leafy spurge</u>
<i>Fallopia japonica</i>	<u>Japanese knotweed</u>
<i>Fallopia sachalinensis</i>	<u>giant knotweed</u>
<i>Fallopia x bohemica</i>	<u>Bohemian knotweed</u>
<i>Ficaria verna</i>	lesser celandine
<i>Galega officinalis</i>	goatsrue
<i>Genista monspessulana</i>	French broom
<i>Geranium lucidum</i>	shiny geranium
<i>Glossostigma diandrum</i>	mud mat
<i>Glyceria maxima</i>	reed sweetgrass, tall manna grass
<i>Gymnocoronis spilanthoides</i>	Senegal tea plant
<i>Helianthus ciliaris</i>	Texas blueweed
<i>Heracleum mantegazzianum</i>	giant hogweed, giant cow parsnip
<i>Hibiscus trionum</i>	Venice mallow, flower-of-an-hour, bladder ketmia, modesty, shoo-fly
<i>Hieracium</i> spp. All nonnative species and hybrids	nonnative hawkweeds
<i>Hydrilla verticillata</i>	hydrilla
<i>Hydrocharis morsus-ranae</i>	European frog-bit

Scientific Name	Common Names
<i>Impatiens glandulifera</i>	policeman's helmet
<i>Impatiens parviflora</i>	<u>small-flowered jewelweed</u>
<i>Iris pseudacorus</i>	<u>yellow flag iris</u>
<i>Isatis tinctoria</i>	dyers' woad
((<i>Kochia scoparia</i>	koehia, summer-cyprus, burning-bush, fireball, Mexican fireweed))
<i>Jacobaea vulgaris</i> (syn. <i>Senecio jacobaea</i>)	<u>tansy ragwort</u>
<i>Lagarosiphon major</i>	African elodea
<i>Lamiastrum galeobdolon</i>	yellow archangel
<i>Lepidium latifolium</i>	perennial pepperweed
<i>Leucanthemum vulgare</i>	oxeye daisy, white daisy, whiteweed, field daisy, marguerite, poorland flower
<i>Limnobium laevigatum</i>	<u>South American spongeplant</u>
<i>Limnobium spongia</i>	<u>American spongeplant</u>
<i>Linaria dalmatica</i> spp. <i>dalmatica</i>	Dalmatian toadflax
<i>Ludwigia hexapetala</i>	water primrose
<i>Ludwigia peploides</i>	floating primrose-willow
<i>Lycopsis arvensis</i>	<u>annual bugloss</u>
<i>Lysimachia vulgaris</i>	garden loosestrife
<i>Lythrum salicaria</i>	purple loosestrife
<i>Lythrum virgatum</i>	wand loosestrife
<i>Marsilea mutica</i>	Australian water clover
<i>Mirabilis nyctaginea</i>	wild four o'clock, umbrella-wort
<i>Murdannia keisak</i>	marsh dew flower, Asian spiderwort
<i>Myriophyllum aquaticum</i>	parrotfeather
<i>Myriophyllum heterophyllum</i>	variable-leaf milfoil
<i>Myriophyllum spicatum</i>	Eurasian watermilfoil
<i>Najas minor</i>	slender-leaved naiad, brittle naiad
<i>Nymphoides peltata</i>	yellow floating heart
<i>Onopordum acanthium</i>	Scotch thistle
((<i>Polygonum cuspidatum</i>	Japanese knotweed
<i>Polygonum polystachyum</i>	Himalayan knotweed
<i>Polygonum sachalinense</i>	giant knotweed
<i>Polygonum x bohemicum</i>	Bohemian knotweed, Japanese and giant knotweed hybrid))

Scientific Name	Common Names
<u><i>Persicaria wallichii</i></u> (<u>syn. <i>Polygonum polystachyum</i></u>)	Himalayan knotweed
<i>Proboscidea louisianica</i>	unicorn-plant
<i>Pueraria montana</i> var. <i>lobata</i>	kudzu
<i>Sagittaria graminea</i>	grass-leaved arrowhead
<i>Sagittaria platyphylla</i>	delta arrowhead
<i>Salvia aethiopsis</i>	Mediterranean sage
<i>Salvia pratensis</i>	meadow clary
<i>Salvia sclarea</i>	clary sage
<i>Schoenoplectus mucronatus</i>	ricefield bulrush
((<i>Senecio jacobaea</i>	tansy ragwort))
<i>Silybum marianum</i>	milk thistle
<i>Solanum elaeagnifolium</i>	silverleaf nightshade
<i>Solanum rostratum</i>	buffaloburr
<i>Soliva sessilis</i>	lawnweed
<i>Sorghum halepense</i>	johnsongrass
<i>Spartina alterniflora</i>	smooth cordgrass
<i>Spartina anglica</i>	common cordgrass
<i>Spartina densiflora</i>	dense-flowered cordgrass
<i>Spartina patens</i>	salt meadow cordgrass
<i>Spartium junceum</i>	Spanish broom
<i>Stratiotes aloides</i>	water soldier
<i>Tamarix ramosissima</i>	saltcedar
<i>Thymelaea passerina</i>	spurge flax
<i>Torilis arvensis</i>	hedgearsley
<i>Trapa natans</i>	water chestnut, bull nut
<i>Trapa bicornus</i>	water caltrap, devil's pod, bat nut
<u><i>Tripidium ravennae</i></u>	<u>Ravenna grass</u>
<i>Ulex europaeus</i>	gorse, furze
<i>Utricularia inflata</i>	swollen bladderwort
<i>Zygophyllum fabago</i>	Syrian bean-caper

[Statutory Authority: RCW 17.10.074, 17.24.011, 17.24.041, and chapter 34.05 RCW. WSR 16-14-003, § 16-752-610, filed 6/23/16, effective 7/24/16; WSR 14-07-040, § 16-752-610, filed 3/12/14, effective 4/12/14. Statutory Authority: Chapters 17.10, 17.24, and 34.05 RCW. WSR 09-19-006, § 16-752-610, filed 9/3/09, effective 10/4/09; WSR 04-19-004, § 16-752-610, filed 9/2/04, effective 10/3/04. Statutory Authority: Chapters 17.24, 17.10, 15.13 RCW. WSR 02-12-030, § 16-752-610, filed 5/29/02, effective 6/29/02. Statutory Authority: Chapters 17.24, 17.10 RCW. WSR 00-24-021, § 16-752-610, filed 11/28/00, effective 12/29/00; WSR 98-13-008, § 16-752-610, filed 6/4/98, effective 7/5/98. Statutory Authority: Chapters 17.10 and

17.24 RCW. WSR 92-07-025, § 16-752-610, filed 3/10/92, effective
4/10/92.]