



## Notice of Intent to Adopt Rules

A copy of the proposed rules may be obtained at <http://rules.wyo.gov>

Revised November 2016

### 1. General Information

a. Agency/Board Name*		
b. Agency/Board Address	c. City	d. Zip Code
e. Name of Agency Liaison	f. Agency Liaison Telephone Number	
g. Agency Liaison Email Address		
h. Date of Public Notice	i. Comment Period End Date	
j. Public Comment URL or Email Address:		
k. Program		
* <input type="checkbox"/> By checking this box, the agency is indicating it is exempt from certain sections of the Administrative Procedure Act including public comment period requirements. Please contact the agency for details regarding these rules.		

**2. Legislative Enactment** For purposes of this Section 2, "new" only applies to regular rules promulgated in response to a Wyoming legislative enactment not previously addressed in whole or in part by prior rulemaking and does not include rules adopted in response to a federal mandate.

a. Are these rules new as per the above description and the definition of "new" in Chapter 1 of the Rules on Rules?

☐ No. ☐ Yes. Please provide the Enrolled Act Numbers and Years Enacted:

### 3. Rule Type and Information

a. Provide the Chapter Number, Title, and Proposed Action for Each Chapter.

*Please use the Additional Rule Information form for more than 10 chapters, and attach it to this certification.*

Chapter Number:	Chapter Name:	<input type="checkbox"/> New <input type="checkbox"/> Amended <input type="checkbox"/> Repealed
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Chapter Number:	Chapter Name:	<input type="checkbox"/> New <input type="checkbox"/> Amended <input type="checkbox"/> Repealed
Chapter Number:	Chapter Name:	<input type="checkbox"/> New <input type="checkbox"/> Amended <input type="checkbox"/> Repealed

#### **4. Public Comments and Hearing Information**

a. A public hearing on the proposed rules has been scheduled. ☐ No. ☐ Yes. Please complete the boxes below.

Date:	Time:	City:	Location:

b. What is the manner in which interested persons may present their views on the rulemaking action?

☐ By submitting written comments to the Agency at the physical and/or email address listed in Section 1 above.

☐ At the following URL: \_\_\_\_\_

A public hearing will be held if requested by 25 persons, a government subdivision, or by an association having not less than 25 members. Requests for a public hearing may be submitted:

☐ To the Agency at the physical and/or email address listed in Section 1 above.

☐ At the following URL: \_\_\_\_\_

c. Any person may urge the Agency not to adopt the rules and request the Agency to state its reasons for overruling the consideration urged against adoption. Requests for an agency response must be made prior to, or within thirty (30) days after adoption, of the rule, addressed to the Agency and Agency Liaison listed in Section 1 above.

#### **5. Federal Law Requirements**

a. These rules are created/amended/repealed to comply with federal law or regulatory requirements. ☐ No. ☐ Yes. Please complete the boxes below.

Applicable Federal Law or Regulation Citation:	
Indicate one (1):	
<input type="checkbox"/> The proposed rules meet, but do not exceed, minimum federal requirements.	
<input type="checkbox"/> The proposed rules exceed minimum federal requirements.	
Any person wishing to object to the accuracy of any information provided by the Agency under this item should submit their objections prior to final adoption to:	
<input type="checkbox"/> To the Agency at the physical and/or email address listed in Section 1 above.	
<input type="checkbox"/> At the following URL: _____	

#### **6. State Statutory Requirements**

a. Indicate one (1):

☐ The proposed rule change *MEETS* minimum substantive statutory requirements.

☐ The proposed rule change *EXCEEDS* minimum substantive statutory requirements. Please attach a statement explaining the reason that the rules exceed the requirements.

b. Indicate one (1):

☐ The Agency has complied with the requirements of W.S. 9-5-304. A copy of the assessment used to evaluate the proposed rules may be obtained:

☐ By contacting the Agency at the physical and/or email address listed in Section 1 above.

☐ At the following URL: \_\_\_\_\_

☐ Not Applicable.

## **7. Additional APA Provisions**

a. Complete all that apply in regards to uniform rules:

☐ These rules are not impacted by the uniform rules identified in the Administrative Procedure Act, W.S. 16-3-103(j).

☐ The following chapters do not differ from the uniform rules identified in the Administrative Procedure Act, W.S. 16-3-103(j):

\_\_\_\_\_  
(Provide chapter numbers)

☐ These chapters differ from the uniform rules identified in the Administrative Procedure Act, W.S. 16-3-103(j) (see Statement of Principal Reasons).

\_\_\_\_\_  
(Provide chapter numbers)

b. Checklist

☐ The Statement of Principal Reasons is attached to this Notice and, in compliance with *Tri-State Generation and Transmission Association, Inc. v. Environmental Quality Council*, 590 P.2d 1324 (Wyo. 1979), includes a brief statement of the substance or terms of the rule and the basis and purpose of the rule.

☐ If applicable: In consultation with the Attorney General's Office, the Agency's Attorney General representative concurs that strike and underscore is not required as the proposed amendments are pervasive (Chapter 3, *Types of Rules Filings*, Section 1, Proposed Rules, of the Rules on Rules).

## **8. Authorization**

a. I certify that the foregoing information is correct.

*Printed Name of Authorized Individual*

*Title of Authorized Individual*

*Date of Authorization*

## CHAPTER 57

### Weed and Pest Special Management Programs Intent to Adopt New Rules

#### Statement of Principal Reasons for Adoption of Rules

The Wyoming Board of Agriculture proposes to adopt new rules pursuant to the provisions of Wyo. Stat. § 11-5-303(g)(i).

The proposed new rules and regulations address the implementation of special management programs by County Weed and Pest Control Districts. They are intended to assist local Weed and Pest Control District Board members and staff in interpreting and complying with the current program's statutory requirements.

The Special Management Program, as defined under Wyoming statutes §§ 11-5-301 through 11-5-303, was originally created by Enrolled Act HEA0029 in 1978. However, the law has been amended during various legislative sessions throughout the past 40 years. In 1979, the Wyoming Board of Agriculture adopted rules and regulations (Chapter 49: Leafy Spurge Control Act of 1978) to assist the Wyoming Department of Agriculture and the County Weed and Pest Control Districts with implementation. Due to the extent of the legislative changes since then, Chapter 49 became irrelevant and was repealed in 1995. New rules were drafted in 1995 to match the amended statutes, but were never fully adopted by the Wyoming Board of Agriculture.

The proposed new rules and regulations were created by a Wyoming Weed and Pest Council special committee. They provide clarification and guidance on various questions and uncertainties that have arisen from the statutes over the past several years. The draft rules include clarification on the prioritization of leafy spurge (*Euphorbia esula* L.); contract stipulations and advertisement requirements for new landowner enrollees; and annual reporting and review requirements.

These proposed rules and regulations were approved unanimously by the Wyoming Weed and Pest Council at the November 2<sup>nd</sup>, 2015 regular meeting. The Wyoming Weed and Pest Council presented the proposed rules and regulations to the Wyoming Board of Agriculture at their August 19<sup>th</sup>, 2016 public meeting. The Board of Agriculture approved the draft and granted the Department of Agriculture permission to proceed.

## Chapter 57

### Weed and Pest Special Management Programs

**Section 1. Authority.** This Rule is promulgated pursuant to W.S. 11-5-303(g)(i) of the Wyoming Weed and Pest Control Act, Article 3 (W.S. 11-5-301 through -303), and the Wyoming Administrative Procedures Act.

**Section 2. Definitions.** As used in this rule the following definitions shall apply:

(a) “Best management practices” means the optimal methods for the consistently-effective management of weeds or pests. Best management practices may change as new methods are discovered. Best management practices are determined by comparing efficacy to the economical and ecological impacts of the action.

(b) “Prioritize” means the identification, control, and management of all known infestations of a species within a District’s boundaries through the use of best management practices.

(c) “Prior notification” means giving a landowner notice of intent at least 5 (five) days in advance of accessing the property. Prior notification may be provided by written or oral communication.

(d) “Written Consent” means a binding agreement that is signed digitally or on paper.

### **Section 3. Implementing a Special Management Program**

(a) A District Board may implement a Special Management Program; Leafy spurge (*Euphorbia esula*) shall be prioritized as one (1) of the two (2) species allowed in the program.

(i) By resolution, a District Board may prioritize Leafy spurge (*Euphorbia esula*) under W.S. 11-5-105(a)(i)

(ii) If a District Board prioritizes Leafy spurge under W.S. 11-5-105(a)(i) they may implement a special management program on an additional weed or pest, not to exceed a total of two (2) species.

(b) To establish potential management zones the District Board shall request the District Supervisor, or his designee, complete an inventory of the potential species being considered on lands within the district to determine the scope of infestation.

(c) The District Supervisor shall issue a report with findings that addresses:

- (i) A map showing the scope of the infestation.
- (ii) Estimated infestation levels.
- (iii) Land use practices by landowner(s).
- (iv) Any non-target species of concern.
- (v) Any other relevant information.
- (vi) Options for management criteria.

(d) The District Board shall prepare a resolution, to be considered at a regularly scheduled Business Meeting, which proposes to implement a Special Management Program. The resolution shall include:

(i) One (1) or more defined management zones within the District for each individual species.

- (ii) Species profile.
- (iii) Scientific name and common name.
- (iv) Reasons for concern to the District.

(e) Upon approval of the District Board's resolution, the District Supervisor, or designee, shall contact the landowners within the management zone to obtain consent for participation and formation of the management zone.

(i) A management zone may only be formed with the written consent of a majority of the landowners in the management zone, but may contain as few as one landowner.

(f) At least 10 (ten) days before a special management program's final approval, the District Board shall publish notice describing the program in at least 1 (one) newspaper of general circulation within the county. Notice shall include the following information:

- (i) Targeted weed(s) and/or pest.
- (ii) General description of the special management program.

- (iii) Participating landowner or corporate name(s).
- (iv) Approximate annual cost of the special management program including all cooperators.
- (g) At the District Boards next scheduled meeting, the district supervisor shall notify the District Board of the special management programs implementation.

#### **Section 4. Landowner Cooperative Agreements**

(a) After the District Supervisors' final approval of the program, the District Board and landowner(s) within a management zone shall enter into a cooperative agreement, not to exceed 5 (five) years in duration, which shall include:

- (i) A map of geographic area of the participating landowner included in the management zone.

- (ii) District options for materials and methods.

- (iii) The best management practices for the management zone.

- (iv) Long-term and short-term treatment protocols considering all available best management practices.

- (v) Estimated annual District costs and Landowner costs.

- (vi) Prior notification procedures and provisions for access to the enrolled property.

- (vii) Provisions for contract revisions or cancellations by either the District or the Landowner(s).

(b) The contract shall be reviewed and revised as needed at the end of the fifth year.

(c) The landowner may request mediation to handle any grievances with the cooperative agreement.

(d) The District Board shall maintain a copy of the contract for a minimum of two (2) years after its expiration or termination date.

(e) The District Board shall maintain records of district costs and approximated acres treated per landowner for a minimum of two (2) years after the contract's expiration or termination date.

## **Section 5. Budget.**

(a) The District Board shall budget the necessary funds, as allowed by W.S. 11-5-303(e), to carry out the special management program.

(b) The District Board shall budget for all costs associated with the administration and implementation of the program.

(c) The District Board shall use a budget process as defined by the Uniform Municipal Fiscal Procedures Act.

(d) Funding may be used for research purposes if such research is directly related to the species identified in the District Board resolution and would be directly applicable to management efforts within the district.

## **Section 6. Methods.**

(a) The District may engage in the application of pesticides and/or may have application equipment available to supplement commercial and private applicators.

(b) The program shall adhere to W.S. 11-5-105(a)(vi).

(c) The District Board may consider the labor and equipment expenses incurred by a landowner when deciding reasonable cost-sharing of treatment.

(d) If any other entity or Government agency cost-shares on any acre of treatment related to the special management program, the landowner shall inform the District Board of such cost-sharing and the amount provided prior to approval of any contractual agreement.

## **Section 7. Special Management Program Maintenance.**

(a) New Landowner participation:

(i) The District may enter into a cooperative agreement as set forth in Section 4 with new landowners desiring to join an established Special Management Program within the District.

(A) If new landowner participation does not alter the District's current advertised budget, then the District shall include the new landowner names or corporate names within the annually published proposed budget summary as required by W.S. 16-4-109(a). This notice shall specify the targeted weed(s) and or pest.

(ii) If the estimated cost for new landowners participation will alter the District's approved budget, the District Board shall have a vote to add the new landowner(s)



and , and if approved, shall follow the proper budget amendment process. The budget amendment advertisement shall include the name or corporate name of the new participating landowner(s), and shall specify the targeted weed(s) and or pest.

#### **Section 8. Annual Program Review**

(a) The District Board shall annually review the Special Management Program:

(i) The District Supervisor shall annually prepare a report of the special management program for the District Board by December 31<sup>st</sup>. The report shall include:

(ii) Landowner names

(iii) Agency participation

(iv) Cost of product(s) supplied

(v) Application costs

(vi) Acres treated

(vii) Acres covered

(viii) District, cooperator and total cost

(ix) Brief assessment of the program's overall successes and setbacks for the year.

(x) This report shall be available upon request by any member of the public.

(b) The District shall keep on file a copy of all public notices for the Special Management Program for the duration of the Program.

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- (b) The contract shall be reviewed and revised as needed at the end of the fifth year.
- (c) The landowner may request mediation to handle any grievances with the cooperative agreement.
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(iii)   Agency participation

(iv)    Cost of product(s) supplied

(v)     Application costs

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(vii)   Acres covered

(viii)  District, cooperator and total cost

(ix)    Brief assessment of the program's overall successes and setbacks for the year.

(x)     This report shall be available upon request by any member of the public.

(b)     The District shall keep on file a copy of all public notices for the Special Management Program for the duration of the Program.