

## DEPARTMENT OF AGRICULTURE

### Conservation Services Division

## ADMINISTRATION AND ENFORCEMENT OF THE WEED FREE FORAGE CROP CERTIFICATION ACT

### 8 CCR 1206-3

[Editor's Notes follow the text of the rules at the end of this CCR Document.]

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#### 1.00 DEFINITION OF TERMS

- a. "Weed free" means to be free from propagative plant parts and free from weed seed from plants set forth on the state or regional lists in Section 1.01 and 1.02 below.
- b. "Propagative plant parts" are any part of a plant capable of reproducing itself, including live roots, rhizomes, and/or stolons present in the forage to be harvested.
- c. "Weed seed" includes the bud stage or later of broadleaf plants and the boot stage or later of grasses.
- d. "Weeds" are those plants set forth in the regional list in Section 1.02 below.
- e. "Treated" means utilizing treatment methods to prevent weed seed formation including, but not limited to, burning, mowing, roguing, mechanical methods, or chemically treating.
- f. "Forage" includes hay, straw or mulch.
- g. "Department" is the Conservation Services Division, Colorado Department of Agriculture.
- h. "Commissioner" is the Commissioner of Agriculture, State of Colorado.
- i. "Producer" is the grower and/or seller of the forage.
- j. "Cubes" means certified weed free forage that has been processed into cube form. Cubes, as that term is used herein, are derived solely from hay and not from other feed crops.
- k. "Pellets" means certified weed free forage that has been processed into pellet form. Pellets, as that term is used herein, are derived solely from hay and not from other feed crops.

#### 1.02 REGIONAL LIST

As to regional certification, the following list applies. In any field to be regional list certified, there shall be no tolerance for any regional list weeds, except as provided in paragraphs 2.00(e)(1) and (2) below.

Absinth wormwood ( *Artemisia absinthium* )

Bermudagrass ( *Cynodon dactylon* )

Biennial wormwood ( *Artemisia biennis* )

Black henbane ( *Hyoscyamus niger* )

Buffalobur ( *Solanum rostratum* )  
Canada thistle ( *Cirsium arvense* )  
Common burdock ( *Arctium minus* )  
Common crupina ( *Crupina vulgaris* )  
Common tansy ( *Tanacetum vulgare* )  
Dalmatian toadflax ( *Linaria genistifolia ssp dalmatica* )  
Diffuse knapweed ( *Centaurea diffusa* )  
Dyers woad ( *Isatis tinctoria* )  
Field bindweed ( *Convolvulus arvensis* )  
Hemp ( *Cannabis sativa* )  
Hoary cress ( *Cardaria draba* )  
Horsenettle ( *Solanum carolinense* )  
Houndstongue ( *Cynoglossum officinale* )  
Johnsongrass ( *Sorghum halepense* )  
Jointed goatgrass ( *Aegilops cylindrica* )  
Leafy spurge ( *Euphorbia esula* )  
Matgrass ( *Nardus stricta* )  
Mayweed chamomile ( *Anthemis cotula* )  
Meadow knapweed ( *Centaurea nigrescens* )  
Medusahead ( *Taeniatherum caput-medusae* )  
Miliun ( *Milium vernale* )  
Musk thistle ( *Carduus nutans* )  
Orange hawkweed ( *Hieracium aurantiacum* )  
Oxeye daisy ( *Leucanthemum vulgare* )  
Perennial pepperweed ( *Lepidium latifolium* )  
Perennial sowthistle ( *Sonchus arvensis* )  
Plumeless thistle ( *Carduus acanthoides* )  
Poison hemlock ( *Conium maculatum* )

Puncturevine ( *Tribulus terrestris* )

Purple loosestrife ( *Lythrum salicaria* )

Quackgrass ( *Elymus repens* )

Rush skeletonweed ( *Chondrilla juncea* )

Russian knapweed ( *Acroptilon repens* )

Scentless chamomile ( *Tripleurospermum perforatum* )

Scotch broom ( *Cytisus scoparius* )

Scotch thistle ( *Onopordum acanthium* )

Sericea lespedeza ( *Lespedeza cuneata* )

Silverleaf nightshade ( *Solanum elaeagnifolium* )

Skeletonleaf bursage ( *Ambrosia tomentosa* )

Sorghum-almum ( *Sorghum almum* )

Spotted knapweed ( *Centaurea stobe* )

Squarrose knapweed ( *Centaurea virgata* )

St. Johnswort ( *Hypericum perforatum* )

Sulfur cinquefoil ( *Potentilla recta* )

Syrian bean caper ( *Zygophyllum fabago* )

Tansy ragwort ( *Senecio jacobaea* )

Toothed spurge ( *Euphorbia dentata* )

Wild oats ( *Avena fatua* )

Wild proso millet ( *Panicum miliaceum* )

Yellow hawkweed ( *Hieracium pratense tause* )

Yellow starthistle ( *Centaurea solstitialis* )

Yellow toadflax ( *Linaria vulgaris* )

## **2.00 PROCEDURES FOR CERTIFICATION OF WEED FREE CROPS**

- a. A request for certification of forage crops shall be made to the Department. Said request may be made by phone or in writing.
- b. An inspection request form shall be completed by the producer prior to inspection.

- c. The Department shall arrange for an inspector.
- d. The forage crop shall be inspected in the field(s) of origin. The field shall include the surrounding ditches, fence rows, roads, easements, rights of way, or buffer zones surrounding the field.
- e. Forage which contains any weed(s) designated on the regional list may be certified if the following requirements are met:
  - 1. The field upon which the forage was produced has been treated to prevent seed formation prior to bud stage or boot stage to the degree that there is no danger of dissemination of the seed or any injurious portion thereof from such weeds; and
  - 2. Any propagative plant parts including weed seed, live roots, rhizomes, or stolons of the weeds are not present in the forage to be harvested.
- f. A certificate of inspection shall be completed for each field/lot. The certificate of inspection shall document whether the requirements stated in Section 2.00(e), immediately above, have been met based upon a reasonable and prudent visual inspection.

## **2.01 INSPECTION PROCEDURES**

- a. There shall be a minimum of two entry points per field.
- b. There shall be a minimum of one entry point per each 10 acres.
- c. Each point of entry shall be at least 150 feet into the field, and each additional 150 feet traveled shall constitute an entry point. Travel shall be uninterrupted, proceeding through the field being inspected.
- d. The entire field border shall be walked or driven.
- e. Fields shall be inspected within 10 days prior to harvest.
- g. An inspector may not inspect fields of which said inspector has ownership or financial interest.

## **2.02 PROCEDURES FOR TRACKING AND IDENTIFYING CERTIFIED FORAGE**

- a. The producer shall inform the Colorado Department of Agriculture of the bale count and estimated total weight of the forage harvested from each inspected field.
- b. Repealed.
- c. If required by the purchaser or the producer, or if the forage is destined to be processed into cubes or pellets, a transit document, whether the original or a photocopy thereof, shall accompany all inspected forage offered for sale or sold. The transit document shall contain the inspection certificate number, the producer's name, and the quantity purchased in number of bales and estimated weight. If the forage is to be processed into cubes or pellets, the transit certificate shall also contain the name, address and phone number of the processor. The purchaser, or the processor of cubes or pellets, shall complete the transit document and return it to the Department.
- d. All inspected forage bales shall be identified by a marking system, whether colored twine or marked wire.
- e. Processors of bagged and bulk pellets and cubes shall comply with the following:

- (1) All bags of pellets or cubes from certified forage shall have sewn into the bag a tag which is provided by the Department, identifying it as being made from certified forage. The processor may obtain the tags by delivering to the Department transit certificates, as required in Subsection 2.02.c above.
- (2) All bulk sales of pellets or cubes from certified forage shall be accompanied by the transit certificate(s). As bulk sales of pellets or cubes are made, the processor shall record on an inventory sheet when the sale occurred and what quantities were sold. When inventory sheets are completed, or at least annually, the original documents shall be sent to the Department.
- (3) The processor shall collect and maintain all twine or marked wire, as described in Subsection 2.02.d above, from all certified forage utilized to process cubes or pellets. The twine and wire shall be maintained by the processor for a maximum of one year from the date of processing, or such lesser time as directed by the Department. At the end of one year from the date of processing, if there is no outstanding request by the Department to inspect the twine or wire, the processor may dispose of the collected twine and wire.

### **3.00 QUALIFICATION STANDARDS FOR PERSONS SEEKING DESIGNATION AS AUTHORIZED INSPECTORS OR QUALIFIED EMPLOYEES**

Only qualified inspectors may certify forage as being weed free. Each person seeking designation as an authorized inspector or a qualified employee by the Commissioner shall first attend a seminar given by Colorado Department of Agriculture specifically designed to educate and train inspectors about the law, the principles associated with utilizing weed free forage, and the standardized procedures used during the inspection process.

### **4.00 DELEGATION OF THE COMMISSIONER'S POWERS**

- a. All authorized inspectors and qualified employees shall inspect forage in compliance with the provisions of these rules and regulations.
- b. Forage inspections may be conducted by authorized inspectors or qualified employees.
- c. Investigations of suspected violations of the Weed Free Forage Crop Certification Act or of these rules and regulations shall be conducted by Department employees only.

### **5.00 VIOLATIONS**

It shall be a violation of these rules and regulations to:

- a. Refuse or fail to comply with any provisions of the Weed Free Forage Crop Certification Act (the "Act");
- b. Refuse or fail to comply with any rules and regulations adopted pursuant to the Act or with any lawful order issued by the Commissioner;
- c. Make false or misleading representations or statements in any document required by the Act or these rules and regulations;
- d. Fail to maintain or submit documents required by the Act or these rules and regulations;
- e. Alter or deface in any manner any document or marking system produced as the result of a crop inspection pursuant to the Act or these rules and regulations;

- f. Reproduce, produce a facsimile of, or utilize in any fashion any documentation or marking system pertaining to certification of any crop, except as provided by the Act and these rules and regulations;
- g. Impersonate any state, county, city, or municipal official or inspector; and
- h. Make false, misleading, deceptive, or fraudulent representations regarding certification of any crop.

## **6.00 FEES**

The maximum the producer will be charged for inspections is as follows:

- a. Inspection time, including travel, at a rate not to exceed \$25.00 per hour;
- b. Mileage for the inspector's travel to be charged at the same rate at which officers of the state and employees are reimbursed for use of personal vehicles;
- c. Per diem expenses, if travel and the inspection cannot be reasonably accomplished within one day, not to exceed \$86.00 per day;
- d. A per inspection fee not to exceed \$100.00 plus an acreage fee not to exceed \$4.00 per acre.
- e. The actual cost of the twine or marked wire, including shipping and handling.

## **7.00 – 9.00 RESERVED**

## **10.00 STATEMENTS OF BASIS, SPECIFIC STATUTORY AUTHORITY & PURPOSE**

### **10.01 8 CCR 1203-10 Adopted March 25, 1994 – Effective April 30, 1994**

These rules and regulations are adopted pursuant to the Weed Free Forage Crop Certification Act, § 35-27.5-103, C.R.S. (1993 Supp.).

The purpose of these rules and regulations is to adopt such rules and regulations necessary to carry out the provisions of the Act, including establishing definitions of pertinent terms, state and regional lists of weeds, procedures for certification of weed free forage crops and forage crop inspection, qualification standards for persons seeking designation as authorized inspectors or as qualified employees, delegations by the Commissioner of Agriculture pursuant to § 35-27.5-104 of the Act, procedures for identifying and tracking certified forage crops, and violations of the Act and rules and regulations thereto.

### **10.02 8 CCR 1203-10 Adopted March 17, 1995 – Effective April 30, 1995**

These amendments to the rules and regulations are adopted pursuant to the Weed Free Forage Crop Certification Act, § 35-27.5-103, C.R.S. (1994 Supp.).

The purpose of these amendments to the rules and regulations is to adopt such rules and regulations necessary to carry out the provisions of the Act, specifically, establishing procedures for tracking and identifying certified forage including the use of inventory sheets and transit documents and raising the acreage fee, establishing an inspection fee, and adding a charge for handling of twine with the intent of covering all costs, direct and indirect, of the Department of Agriculture in the administration and enforcement of the Act.

### **10.03 8 CCR 1203-10 Adopted May 29, 1997 – Effective July 30, 1997**

These amended rules are adopted pursuant to the Weed Free Forage Crop Certification Act, § 35-27.5-103, C.R.S. (1995).

The purpose of these amended rules is to delete all reference to a "Colorado State Weed List" and to apply the "Regional List" as well as to update the "Regional List."

#### **10.04 8 CCR 1203-10 Adopted September 10, 1998 – Effective October 30, 1998**

These rules are adopted pursuant to the Weed Free Forage Crop Certification Act, § 35-27.5-103, C.R.S. (1998).

The purposes of these rules are to add a weed of region-wide concern to the designation of prohibited weeds in the regional list and to define procedures for identification and tracking of certified weed free forage destined to be processed into cubes and pellets.

#### **10.05 8 CCR 1203-10 Adopted November 13, 2006 – Effective January 1, 2007**

##### **Statutory Authority**

This amendment to the rules is adopted by the Commissioner of Agriculture pursuant to his authority under the Colorado Weed Free Forage Crop Certification Act, §35-27.5-103 (1), C.R.S. (2006).

##### **Purpose**

The purpose of this amendment to the rules is to (1) raise the mileage reimbursement for personal vehicles used by contracted weed free forage inspectors from \$0.26 per mile to \$0.36 per mile; and (2) to include a section for Statements of Basis, Specific Statutory Authority and Purpose for this rule.

##### **Factual Basis**

The factual and policy issues encountered in the proposal of this amendment to the rules is as follows:

Senate Bill 06-173 allows for each mile actually and necessarily traveled while on official state business calculated at 80% of the prevailing Internal Revenue Service mileage reimbursement rate to the nearest cent. Reimbursing contract inspectors 36 cents per mile would reflect the prevailing rate.

#### **10.06 8 CCR 1203-10 Adopted April 16, 2009 – Effective May 30, 2009**

##### **Statutory Authority**

This amendment to the rules is adopted by the Commissioner of Agriculture pursuant to his authority under the Colorado Weed Free Forage Crop Certification Act, § 35-27.5-103, C.R.S (2008)

##### **Purpose**

The purpose of this amendment to the rule is to change the mileage rate charged to producers from a fixed \$.36 per mile to the prevailing rate reimbursed to state officers and employees per mile for miles actual and necessary for state business. This will allow the Department to adjust the rate charged to producers to track the official state rate without further rule making.

The factual and policy issues encountered in the proposal of this amendment to the rule are as follows:

The rate at which state officers and employees are reimbursed at is set forth in section 24-9-104, (2)(d), C.R.S. (2008): On and after January 1, 2008, state officers and employees shall be allowed a mileage allowance for each mile actually and necessarily traveled while on official state business calculated at

ninety percent of the prevailing internal revenue service mileage reimbursement rate to the nearest cent, and, when authorized to be utilized and necessary for official state business, ninety-five percent of the prevailing internal revenue service mileage reimbursement rate to the nearest cent for four-wheel-drive vehicles.

#### **10.07 Adopted June 11, 2013 – Effective July 30, 2013**

##### **Statutory Authority**

These rules are adopted by the Commissioner of Agriculture pursuant to his authority under the Colorado Weed Free Forage Crop Certification Act, § 35-27.5-103 C.R.S.

##### **Purpose**

The purposes of these rules are to:

Move the existing Weed Free Forage Crop Certification Act rules from their current location at 8 CCR 1203-10 to a new location at 8 CCR 1206-3 and make the changes described below.

Change rule 1.00 (c) to add "or later" after the terms "bud stage" and "boot stage" of broadleaf plants and grasses respectively.

Change rule 1.00 (d) by replacing the word "weeds" with the word "plants" and eliminating the words "state and." Eliminate the "s" in "lists" making it singular. Also eliminate the "s" in "sections" making it singular and eliminate "1.01 and."

Change rule 1.00 (g) to replace "Plant Industry Division" with "Conservation Services Division."

Change rule 1.02 by switching the order of "Biennial wormwood (*Artemisia biennis*)" and "Bermudagrass (*Cynodon dactylon*)."

Change rule 1.02 by changing "Henbane, black" to "Black henbane."

Change rule 1.02 by replacing "Loosestrife" with "Purple loosestrife."

Change rule 1.02 by replacing "Meadow knapweed (*Centaurea pratensis*)" with "Meadow knapweed (*Centaurea nigrescens*)."

Change rule 1.02 by replacing "Ox-eye daisy (*Chrysanthemum leucanthemum*)" with "Oxeye daisy (*Leucanthemum vulgare*)."

Change rule 1.02 by changing "Puncture vine" to "Puncturevine."

Change rule 1.02 by changing "Quackgrass (*Elytrigia repens*)" to "Quackgrass (*Elymus repens*)."

Change rule 1.02 by replacing "Scentless chamomile (*Maticaria perforate*)" with "Scentless chamomile (*Tripleurospermum perforatum*)."

Change rule 1.02 by moving "Mayweed chamomile (*Anthemis cotula*)" from its current order and list it after "Matgrass (*Nardus stricta*)."

Change rule 1.02 by changing "Spotted knapweed (*Centaurea maculosa*)" to "Spotted knapweed (*Centaurea stobe*)."



Change rule 1.02 by changing "Squarrose knapweed (*Centaurea squarrose*)" to "Squarrose knapweed (*Centaurea virgata*)."

Change rule 1.02 by moving "Wild proso millet (*Panicum miliaceum*)" from its current order and placing it after "Toothed spurge (*Euphorbia dentata*)."

Change rule 1.02 by moving "Wild oats (*Avena fatua*)" from its current order and placing it before "Wild proso millet (*Panicum miliaceum*)."

Change rule 2.00(a) by striking "a" from the sentence.

Change rule 2.00(e)2 by adding "Any propagative plant parts including weed seed" at the beginning of the sentence.

Change rule 2.02 (a) to replace "inspector" with "Colorado Department of Agriculture" to receive the bale count and estimated total weight of forage harvested from each field from producers.

Eliminate rule 2.02(b).

Change rule 3.00 to replace "Colorado State University Cooperative Extension" with the "Colorado Department of Agriculture" as the agency responsible for training inspectors and eliminate the proof of attendance requirement.

#### Factual and policy basis

The factual and policy issues encountered in the proposal of these amendments to the rules are as follows:

1. 1.00(c). Adding the phrase "or later" after bud stage and boot stage clarifies that the definition of "Weed seed" not only includes the bud and boot stage but all subsequent stages of development.
2. 1.02. Biennial wormwood (*Artemisia bieniss*), Bermudagrass (*Cynodon dactylon*), Black henbane (*Hyoscyamus niger*), Mayweed chamomile (*Anthemis cotula*), Purple loosestrife (*Lythrum salicaria*), Wild proso millet (*Panicum miliaceum*), and Wild oats (*Avena fatua*) are not in correct alphabetical order within the regional list of weeds. This proposed change will place them in their proper alphabetical order with in the list.
3. 1.02. Loosestrife, Ox-eye daisy and Puncture vine are incorrect common names. The proposed change to Purple loosestrife, Oxeye daisy and Puncturevine will correct the common name for these species.
4. 1.02. The Department proposes to correct the scientific names of seven currently listed species in the regional list of weeds in order to remain consistent with currently accepted botanical nomenclature. These species are:

Meadow knapweed (*Centaurea pratensis*) to (*Centaurea nigrescens*)

Oxeye daisy (*Chrysanthemum leucanthemum*) to (*Leucanthemum vulgare*)

Quackgrass (*Elytrigia repens*) to (*Elymus repens*)

Scentless chamomile (*Maticaria perforata*) to (*Tripleurospermum perforatum*)

Spotted knapweed (*Centaurea maculosa*) to (*Centaurea stobe*)

Squarrose knapweed (*Centaurea squarrosa*) to (*Centaurea virgata*)

5. 2.00(a) Removing "a" from the sentence is a grammatical correction.
6. 2.00(e)(2). Adding "Any propagative plant parts including weed seed" clarifies that any propagative portion of a weed including the seed may not be present at the time of harvest.
7. 2.02(a). The current rule requires the producer to inform the inspector of the bale count and estimated tonnage of each field. However, at the time of the inspection the forage has not been harvested so an accurate bale count is not available. Once harvest has been completed it is more convenient and reasonable for the producer to report bale counts directly to the Department which typically has received the original field inspection reports from the inspector by that time.
8. 2.02(b). Currently, the rule requires the producer to complete an inventory sheet for each field as forage is sold to be returned to the Department when all certified product is sold or at least once a year. This requirement was originally designed to help the Department track certified forage and mulch to help verify that only certified product was being sold as such. However, because the Department issues only enough orange and blue twine for a producer to complete baling the inspected acres and retrieves any leftover twine from producers, this requirement places an undue paperwork burden on producers and does not lend to the tracking of certified product as previously thought.
9. 3.00. Currently, the Colorado Department of Agriculture conducts the seminars to educate and train inspectors about the law, the identification of noxious weeds, principles associated with utilizing weed free forage and standardized inspection procedures. Colorado State University aids the Department of Agriculture by providing weed identification instruction to potential inspectors. Since the passage of the Certified Weed Free Forage rules the Colorado Department of Agriculture has taken a more active role in providing the training to potential inspectors. Moving forward this change will provide the Department more flexibility in the future training of inspectors. Once the Department of Agriculture is responsible for the training of inspectors there will be no need to submit proof of attendance at said seminar or a written request for designation as an authorized inspector or qualified employee.
10. Currently, the rules for Weed Free Forage Certification are codified at 8 CCR 1203-10 with the other rules promulgated under the statutory programs administered and enforced by the Plants Division of the Colorado Department of Agriculture. The Weed Free Forage Certification program was moved from the Plants Division to the Conservation Division in 2012. These new rules will be codified with the Conservation Division's other rules. This will make it easier for the public to locate and access them on-line.

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## Editor's Notes

## History

Entire rule recodified from 8 CCR 1203-10 eff. 07/30/2013.