Colorado Department of Agriculture

Plant Industry Division

Administration and Enforcement of the Weed Free Forage Crop Certification Act

8 CCR 1203-10

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 of broadleaf plants and the boot stage of grasses.

d. "Weeds" are those weeds set forth in the state and regional lists in Sections 1.01 and 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 Plant Industry 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*)

Biennial wormwood (*Artemisia biennis*)

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Bermudagrass (*Cynodon dactylon*)

Buffalobur (*Solanum rostratum*)

Canada thistle (*Cirsium arvense*)

Common burdock (*Arctium minus*)

Common crupina (*Crupina vulgaris*)

Common tansy (*Tanacetum vulgare*)

Dalmatian toadflax (*Linaria qenistifolia ssp dalmatica*)

Diffuse knapweed (*Centaurea diffusa*)

Dyers woad (*Isatis tinctoria*)

Field bindweed (*Convolvulus arvensis*)

Hemp (*Cannabis sativa*)

Henbane, black (*Hyoscyamus niger*)

Hoary cress (*Cardaria draba*)

Horsenettle (*Solanum carolinense*)

Houndstongue (*Cynoglossum officinale*)

Johnsongrass (*Sorghum halepense*)

Jointed goatgrass (*Aegilops cylindrica*)

Leafy spurge (*Euphorbia esula*)

Loosestrife (*Lythrum salicaria*)

Matgrass (*Nardus stricta*)

Meadow knapweed (*Centaurea pratensis*)

Medusahead (*Taeniatherum caput-medusae*)

Milium (*Milium vernale*)

Musk thistle (*Carduus nutans*)

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Orange hawkweed (*Hieracium aurantiacum*)

Ox-eye daisy (*Chrysanthemum leucanthemum*)

Perennial pepperweed (*Lepidium latifolium*)

Perennial sowthistle (*Sonchus arvensis*)

Plumeless thistle (*Carduus acanthoides*)

Poison hemlock (*Conium maculatum*)

Puncture vine (*Tribulus terrestris*)

Quackgrass (*Elytrigia repens*)

Rush skeletonweed (*Chondrilla juncea*)

Russian knapweed (*Acroptilon repens*)

Scentless chamomile (*Maticaria perforata*)

Mayweed chamomile (*Anthemis cotula*)

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 maculosa*)

Squarrose knapweed (*Centaurea squarrosa*)

St. Johnswort (*Hypericum perforatum*)

Sulfur cinquefoil (*Potentilla recta*)

Syrian bean caper (*Zygophyllum fabago*)

Tansy ragwort (*Senecio jacobaea*)

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Toothed spurge (*Euphorbia dentata*)

Yellow hawkweed (*Hieracium pratense tause*)

Yellow starthistle (*Centaurea solstitialis*)

Yellow toadflax (*Linaria vulgaris*)

Wild proso millet (*Panicum miliaceum*)

Wild oats (*Avena fatua*)

2.00 PROCEDURES FOR CERTIFICATION OF WEED FREE CROPS

a. A request for certification of a 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. 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.

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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 inspector of the bale count and estimated total weight of the forage harvested from each inspected field.

b. As forage is sold, the producer shall record on an inventory sheet for each cutting when the sale occurred and what quantities were sold. When the inventory sheets are completed, or at least annually, the original documents shall be sent to the Department.

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.

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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 State University Cooperative Extension 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. Proof of attendance at said seminar shall be submitted to the Commissioner along with a written request for designation as an authorized inspector or qualified employee.

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.

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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 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 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 Adopted May 29, 1997 – Effective July 30, 1997

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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 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 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 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

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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.

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