

# **Statutes:**

## **Weed & Pest Control**

### **Regulations:**

**Chapter 22 – Weed & Pest Supervisor  
Board of Certification**

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Weed & Pest Rule**

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# WEED AND PEST CONTROL

## ARTICLE 1 - IN GENERAL

### 11-5-101. Short title; purpose of provisions.

(a) This act may be cited as the "Wyoming Weed and Pest Control Act of 1973".

(b) The purpose of this act is controlling designated weeds and pests.

### 11-5-102. Definitions.

(a) As used in this act:

(i) "Agricultural pesticide" means any material used to control or eradicate weeds or pests;

(ii) "Authorized dealer" means a resident of Wyoming who sells, retails, wholesales, distributes, offers or exposes for sale, exchanges, barter or gives away any agricultural pesticide within this state;

(iii) "Board" means the Wyoming board of agriculture established by authority of W.S. 11-2-101 through 11-2-104;

(iv) "Director" means the director of the department of agriculture for the state of Wyoming or his designated agent;

(v) "Control" means the process of containing and limiting weed and pest infestations;

(vi) "County commissioners" means the board of county commissioners of a county within which a district is located;

(vii) "Declared pest" means any animal or insect which the board and the Wyoming weed and pest council have found, either by virtue of its direct effect, or as a carrier of disease or parasites, to be detrimental to the general welfare of persons residing within a district;

(viii) "Declared weed" means any plant which the board and the Wyoming weed and pest council have found, either by virtue of its direct effect, or as a carrier of disease or parasites, to be detrimental to the general welfare of persons residing within a district;

(ix) "Department" means the state department of agriculture;

(x) "Designated list" means the list of weeds and pests from time to time designated by joint resolution of the board and the Wyoming weed and pest council;

(xi) "Designated noxious weeds" means the weeds, seeds or other plant parts that are considered detrimental, destructive, injurious or poisonous, either by virtue of their direct effect or as carriers of diseases or parasites that exist within this state, and are on the designated list;

(xii) "Designated pests" means animals or insects which are on the designated list considered detrimental to the general welfare of the state;

(xiii) Repealed by Laws 1993, ch. 191, 4.

(xiv) "District" means any county weed and pest control district;

(xv) "District board" means the board of directors of a district having jurisdiction within the boundaries of the district it represents;

(xvi) "District board member area" means a geographical area within a district from which a member of the board of the district is appointed;

(xvii) Repealed by Laws 1993, ch. 191, 4.

(xviii) "Farm products" means all crops, crop products, plants or portions thereof, but shall not mean livestock;

(xix) "Infested farm products" means farm products which contain injurious insects, pests, weed seed, poisonous or injurious plants or any injurious portion thereof, or plant diseases;

(xx) "Landowner" means any owner or lessee of state, municipal or private land, and includes an owner of any easement, right-of-way or estate in the land. Federal landowner means the federal agency having jurisdiction over any lands affected by this act;

(xxi) "District supervisor" means the person appointed or employed by the district board for the purpose of carrying out this act within a district;

(xxii) "Wyoming weed and pest council" means the state council composed of one (1) representative of each district as authorized in writing by that board of directors. The director of the department of agriculture or his designated representative shall serve ex officio;

(xxiii) "This act" means W.S. 11-5-101 through 11-5-119.

### **11-5-103. Composition of districts.**

All land within the boundaries of Wyoming including all federal, state, private and municipally owned lands, is hereby included in weed and pest control districts within the county in which the land is located, with the boundaries of the district being the same as the boundaries of the county. Each district shall be known as the "... County Weed and Pest Control District, State of Wyoming."

**11-5-104. District board of directors; appointment; terms; vacancies; compensation and expenses.**

(a) The county commissioners of each district shall hold a public meeting for appointing a district board of directors for the district. Prior to the meeting the county commissioners shall establish the number of members of the district board and shall establish district board member areas. The county commissioners may seek the advice and counsel of the members of the former district board for the establishment of district board member areas. Each district board member area shall be contiguous. Notice of the meeting shall be advertised in the official newspaper of the county at least two (2) times before the date of the meeting, with the last publication being at least ten (10) days prior to the date of the meeting. The notice shall solicit nominations for directors by petition signed by at least ten (10) landowners to be submitted at least five (5) days before the date of the meeting.

(b) From the nominations submitted the county commissioners shall appoint the district board which shall consist of five (5) or seven (7) directors. Directors shall serve for a term of four (4) years or until their successors are appointed and qualified.

(c) Any qualified elector in the district board member area he is appointed to represent is eligible to hold the office of director.

(d) All district board members shall be appointed by the county commissioners at their first regular meeting in January of each year from among nominations submitted by petition in the manner set forth in subsection (a) of this section. In districts encompassing cities or towns with a population of five thousand (5,000) or more, one (1) district board member shall be appointed from within the limits of a city or town. A district board member shall assume office at the first regular meeting of the district board following appointment.

(e) The county commissioners shall remove a director for repeated unexcused failure to attend meetings or for refusal or incapacity to act as a district board member.

(f) When a vacancy occurs on a district board the county commissioners shall, at the next regular meeting, appoint an individual who possesses the necessary qualifications as a district board member to fill the unexpired term.

(g) At the first regular meeting in February the district board shall elect from its members a chairman and a vice-chairman, and appoint a secretary and a treasurer. The positions of secretary and treasurer need not be members of the district board. The treasurer shall furnish a surety bond to the district before entering upon the duties of office in an amount to be set by the district board but not less than three thousand dollars (\$3,000.00).

(h) The members of the district board shall serve without pay, but are entitled to reimbursement for actual and necessary expenses and a mileage allowance at the rate as established for state employees.

## **11-5-105. Duties; powers; supervisor compensation.**

(a) The district board shall:

(i) Implement and pursue an effective program for the control of designated weeds and pests;

(ii) Fix the time and place of regular meetings, which shall occur at least once each month and shall be open to the public;

(iii) Keep minutes of all meetings and a complete record of all official acts, including all warrants issued against monies belonging to the district, which are open for public inspection during regular office hours;

(iv) Employ certified district supervisors and if certified personnel are not available, employ an acting district supervisor who shall become certified within twenty-four (24) months from the initial date of employment;

(v) Make at least one (1) annual inspection to determine the progress of weed and pest activities within a district;

(vi) Obtain competitive bids for any purchase costing more than ten thousand dollars (\$10,000.00);

(vii) Control and disburse all monies received from any source;

(viii) Render technical assistance to any city or town with a population of five thousand (5,000) or more which establishes a program as provided in W.S. 11-5-115.

(b) The district board of each district may:

(i) Sue and be sued;

(ii) Employ personnel and determine duties and conditions of employment;

(iii) Coordinate activities with the department and enter into cooperative agreements with other agencies;

(iv) Secure and maintain bond or liability insurance, when deemed feasible by the district board;

(v) Submit to the department reports required by the board;

(vi) Participate in programs for the control of declared weeds and declared pests not included on the designated list. Such programs do not qualify for cost-sharing from the department.

(c) The district supervisor shall receive a salary and expenses as approved by the district board.

**11-5-106. Board of certification; duties.**

A board of certification is established consisting of the director or his designee, a University of Wyoming weed or pest specialist appointed by the dean of the college of agriculture, two (2) certified district supervisors and a district board member appointed by the Wyoming weed and pest council. The board of certification shall promulgate rules and requirements for certification of district supervisors and shall certify all personnel meeting the established requirements. All inspectors certified as of February 10, 1973 are deemed certified district supervisors without any further actions of the board of certification.

**11-5-107. Purchase and sale of pesticides and equipment.**

(a) The district board may purchase from authorized dealers such quantities of agricultural pesticides and equipment as are necessary, and hire labor to carry out the provisions of this act. Warrants in payment shall be drawn on the weed and pest control fund.

(b) The district board may sell agricultural pesticides which have been registered with the department for weed and pest control.

(c) In the case of delinquent indebtedness under this section the district board may seek a judgment from the district court for the indebtedness, reasonable attorneys' fees and costs. The judgment shall be enforced as provided by law.

**11-5-108. Rates and application of pesticides; payment by landowner; bidding restriction.**

(a) The district board may establish rates and engage in the application of agricultural pesticides for weed and pest control, subject to subsection (b) of this section. The district board may cost share in the agricultural pesticides, and the landowner shall pay the full cost of the application. If services provided are not paid for by the landowner for whom rendered, such indebtedness may be collected as provided by W.S. 11-5-107(c).

(b) A district board shall not engage in competitive bidding of bare ground application of pesticides for industrial weed control, unless there are no commercially licensed entities operating in the state that are able and willing to perform the service. Nothing in this subsection shall limit the district board's authority to act pursuant to W.S. 11-5-105(a)(i) and 11-5-109.

**11-5-109. Inspection of land; remedial requirements; cost to landowner.**

(a) Whenever the district board has probable cause to believe that there exists land infested by weeds or pests which are liable to spread and contribute to the injury or detriment of others, it shall make or have made an investigation of the suspected premises through the use of lawful entry procedures. The designated representative of the district board, after giving the landowner written notice, may go upon premises within the district, through the use of lawful entry procedures, without interference or obstruction for purposes of making a reasonable investigation

of the infested area. Notice is deemed to have been given if it is deposited in a United States post office by certified mail with sufficient postage, addressed to the last known address of the landowner at least five (5) days before entry.

(b) If the suspected area is found to be infested, the district board, by resolution adopted by two-thirds (2/3) of its members, shall confirm such fact. The district board may set forth minimum remedial requirements for control of the infested area.

(c) The district board shall deliver, by certified mail, to the address of the landowner appearing on the most recent tax roles of the district:

(i) A copy of the resolution;

(ii) A statement of the cost of fulfilling the requirements; and

(iii) A request that the requirements contained in the resolution be carried out at the owner's expense within a designated period of time or on a cooperative basis.

(d) At the request of the landowner, the district board shall hold a hearing in accordance with the Wyoming Administrative Procedure Act.

(e) A landowner who is responsible for an infestation and fails or refuses to perform the remedial requirements for the control of the weed or pest on the infested area within the time designated may be fined not more than fifty dollars (\$50.00) per day for each day of violation and not more than a total of two thousand five hundred dollars (\$2,500.00) per year as determined by the court. Any person accused under this act is entitled to a trial by jury. The accumulated fines under this section are a lien against the property of the landowner from the day notice is delivered to the landowner by the district board. All fines shall be deposited with the county treasurer and credited to the county school fund.

#### **11-5-110. Appraisal of damage to landowner; hearing.**

When the district board determines by resolution that the landowner's property has been damaged as a result of carrying out its requirements, the district board shall by resolution appoint three (3) disinterested freeholders within the district to appraise the amount of damage, upon which the district shall forthwith compensate the landowner. The landowner may file a claim for damages and is entitled to a hearing relative to the amount of damages pursuant to the Wyoming Administrative Procedure Act.

#### **11-5-111. Tax levied on property in district; maximum amount; weed and pest control fund.**

The county commissioners shall annually levy a tax to carry out this act. The tax shall be levied upon all property in the district and shall not exceed one (1) mill on each one dollar (\$1.00) of assessed valuation. The tax is not part of the general county or city mill levies. All taxes levied

and collected shall be remitted to the district for a separate fund to be known as the weed and pest control fund, which shall be used only to carry out this act.

11-5-112. Repealed by Laws 1979, ch. 135, 3.

**11-5-113. Allocation of funds; formula; special funding.**

(a) An allocation committee composed of the director of the department of agriculture, three (3) members appointed by the Wyoming weed and pest council and one (1) member of the board shall allocate the funds of any legislative appropriation to the district boards pursuant to a formula adopted by the committee. No district board shall receive an amount in excess of one-third (1/3) of its actual expenditures from any appropriation, unless the appropriation provides assistance in control to a district board under subsection (b) of this section.

(b) If the district board determines a weed or pest is seriously endangering areas of a district or the state, assistance in control may be provided by legislative appropriation for this purpose, and the allocation committee shall allocate the appropriation accordingly, and the allocation committee and each affected district board shall be responsible for insuring that the funds are properly expended.

**11-5-114. Allocated funds; procedure to disburse.**

A request for allocated funds pursuant to W.S. 11-5-113 shall be initiated by the district board by submitting a voucher and documentation. Upon the approval of the voucher by the allocation committee, payment shall be made by the state auditor out of funds provided for control of weeds and pests.

**11-5-115. Program in cities and towns authorized; funding; use of monies.**

(a) The governing body of any city or town with a population of five thousand (5,000) or more may establish and administer a program for the control of weeds and pests within the jurisdictional limits of the city or town. If such a program is not established, the district board shall administer a program for the city or town.

(b) A district having a city or town with a population of five thousand (5,000) or more which establishes a program shall, within thirty (30) days after receipt of any funds collected pursuant to W.S. 11-5-111, transfer eighty-five percent (85%) of the funds attributed to the property within the corporate limits of the city or town to the governing body of the city or town, retaining fifteen percent (15%) of the funds for administration of the district and for technical assistance rendered to the city or town by the district board.

(c) Monies received by the cities from the district may be used in any phase of weed and pest control as determined by the governing body of the city or town. The control program shall include work on designated weeds and pests as determined by the district board.

(d) The governing body of a city or town which establishes a control program may petition the district board for special assistance and funding authorized by W.S. 11-5-113 and 11-5-114.

### **11-5-116. Quarantine by director; request by district.**

(a) Whenever the director, the district board or their agents find any section of the state to be infested with insects, pests, poisonous or injurious plants or plant diseases, and it is established that farm products from that section are liable to spread the insects, pests, poisonous or injurious plants or plant diseases into other sections to the injury of others, the director shall without unnecessary delay, declare a quarantine against such section to prevent the transfer of farm products from the quarantined area. When it is ascertained that insects, pests, weed seed, poisonous or injurious plants or plant diseases are likely to be introduced into Wyoming by the importation of farm products, domestic animals or other objects, the director shall declare a quarantine against the importation of such farm products.

(b) A district may initiate a district-wide quarantine by one (1) of the following procedures:

(i) A district may request in writing that the director declare a district-wide quarantine. Upon receipt of the request, the director shall instruct the district to circulate a petition for ninety (90) days within the district to obtain signatures of at least two-thirds (2/3) of all resident landowners owning at least fifty-one percent (51%) of all resident-owned land. Upon receipt of the properly executed petition, the director shall declare a district-wide quarantine;

(ii) A district board may hold a hearing in compliance with the Wyoming Administrative Procedure Act. The director shall declare a district-wide quarantine when the district has provided the director with proper documentation that a hearing has been held and the district has found a need for a district-wide quarantine;

(iii) The district board may hold a district-wide referendum. The director shall declare a district-wide quarantine upon receipt of a certified document indicating that the referendum was accepted by a majority of the electors who voted in the election.

(c) The director shall declare an individual quarantine when requested by resolution adopted by a two-thirds (2/3) majority of the board.

(d) The district board in compliance with W.S. 11-5-101 through 11-5-119 may request a quarantine against the entry of infested farm products that may be injurious and detrimental to the state and enter into agreements with the law enforcing agencies to carry out the quarantine provision:

(i) Farm products and equipment shall be certified free of designated noxious weed seeds or infested farm products prior to entry into the state, with the exception of any processed feed or grain to be reprocessed and fed to livestock;

(ii) Farm products and equipment are to be certified in the state of origin by the proper officials;

(iii) Interstate shipment of farm products through the state need not be certified if covered in a prescribed manner as not to allow the dissemination of infested farm products.

**11-5-117. Criminal provision; penalty.**

Any person violating any provision of this act is guilty of a misdemeanor, and shall be fined not more than one hundred dollars (\$100.00) in addition to fines provided for in W.S. 11-5-109(e).

**11-5-118. Inspection for contamination.**

Farm products and agricultural, commercial or industrial equipment entering or moving within the district are subject to inspection for contamination of designated weeds and pests by the district board through its designated agents. The board and the Wyoming weed and pest council may promulgate rules and regulations which establish inspection standards and remedial requirements under this section.

**11-5-119. Rules and regulations.**

The board, with the approval of a majority of the districts, may promulgate, adopt and publish rules and regulations in accordance with the Wyoming Administrative Procedure Act for the purpose of carrying out the intent of this act.

**ARTICLE 2 - LEAFY SPURGE CONTROL**

11-5-201. Repealed by Laws 1983, ch. 87, 1.

11-5-202. Repealed by Laws 1983, ch. 87, 2.

**ARTICLE 3 - SPECIAL MANAGEMENT PROGRAM**

**11-5-301. Authorization of program.**

A weed and pest special management program may be carried out as provided by this article and legislative appropriation acts. All state and local governmental entities shall comply with the program.

**11-5-302. Definitions.**

(a) As used in this article:

(i) "District" means any county weed and pest control district;

(ii) "Integrated management system" means the planning and implementation of a coordinated program utilizing all proven methods for containing and controlling undesirable

plants and pests, including but not limited to education, preventive measures, physical methods, biological agents, pesticide methods, cultural methods and management;

(iii) "Management zone" means a geographical area within a district;

(iv) "Materials" means materials used in carrying out the objectives of integrated management system;

(v) "Method" means a procedure or process for carrying out the application method prescribed;

(vi) "Pest" means any declared pest or designated pest defined by W.S. 11-5-102(a);

(vii) "Treatment program" means the use of an integrated management system prescribed by the district board or the board's designated representative;

(viii) "Undesirable plant" means any declared weed or designated noxious weed as defined by W.S. 11-5-102(a).

### **11-5-303. Program components; funding; rulemaking authority; penalties.**

(a) Any district may carry out a weed and pest special management program in accordance with this article. If a district initiates a program, leafy spurge (*Euphorbia esula*) shall receive priority in the program. A district may also implement an integrated management system under W.S. 11-5-101 through 11-5-119 using funds specified by W.S. 11-5-111, provided leafy spurge shall receive priority pursuant to this article.

(b) Pursuant to this article a district may implement an integrated management system on two (2) undesirable plants or on two (2) pests or a combination of one (1) undesirable plant and one (1) pest but under no circumstance shall the program exceed a total of two (2).

(c) Any district which implements a special management program under this article shall:

(i) Establish one (1) or more management zones within the district. A management zone can only be formed with the written consent of a majority of the landowners in the proposed management zone;

(ii) Complete an inventory on lands within each management zone to determine the scope of infestation;

(iii) Establish management criteria for the special management program;

(iv) Select the materials and methods for the special management program based upon best available scientific facts, current technology and economic considerations;

(v) At least ten (10) days before final approval of the program by the district supervisors, publish notice in at least one (1) newspaper of general circulation within the county describing the special management program, listing the participating landowners and stating the approximate cost of the program.

(d) Programs under this article shall be funded as follows:

(i) Landowners shall contribute to the cost of the treatment program on their land as determined by the district board not to exceed twenty percent (20%) of the total cost;

(ii) The district shall contribute to the cost of the treatment program within the limitation of district funds available under subsection (e) of this section;

(iii) State or federal agencies owning lands or administering lands, which are untaxed for the purposes of this act, shall contribute the total cost of the treatment program on those lands;

(iv) Assistance to a district's coordinated program may be provided by legislative appropriation pursuant to W.S. 11-5-113(b).

(e) A district may levy not to exceed an additional one (1) mill on the assessed value of the taxable property within the district to fund its contributions under this section. Upon request by the district board, the board of county commissioners may levy the amount of tax requested not to exceed the mill levy authorized by W.S. 11-5-111 and this subsection.

(f) Any landowner who refuses to perform remedial requirements as established by the district board after due notice as required by W.S. 11-5-109 may be subject to a fine provided by W.S. 11-5-109.

(g) The state board of agriculture may:

(i) Adopt rules and regulations as provided by W.S. 11-5-119 to implement an effective special management program in Wyoming; and

(ii) Establish procedures for prompt reporting and billing of expenditures made and for timely forecasting of future expenditures which will be required.

## **ARTICLE 4 - EMERGENCY INSECT MANAGEMENT PROGRAM**

### **11-5-401. Definitions.**

(a) As used in this article:

(i) "Account" means the emergency insect management special revenue account created under W.S. 11-5-402;

(ii) "Committee" means the director of the department of agriculture, the director of the department of health, the director of the game and fish department, the Wyoming state veterinarian and the governor;

(iii) "Insect pests" mean infestations of grasshoppers, Mormon crickets or other cyclic or outbreak insect infestations or insect species new, recently introduced or which present a substantial possibility to be introduced into Wyoming such as fire ants, Africanized honeybees or other insect pests;

(iv) "Insect vectors" mean blood-feeding arthropods, mosquitoes, biting flies and other such insects that harbor or transmit pathogens harmful to human health and safety, animal health including livestock and wildlife, agriculture or natural resources.

**11-5-402. Emergency insect management account; established.**

The emergency insect management program account is created to consist of funds appropriated or designated to the account by law for the emergency management of insect pests or insect vectors.

**11-5-403. Administrative support for committee.**

Administrative support to the committee shall be provided by the department of agriculture. Expenses of the committee incurred under this article including administrative support shall be paid from the account.

**11-5-404. Program development; additional committee responsibilities; annual report.**

(a) Emergency insect management programs developed and receiving funds from the account under this article shall be based upon integrated pest management principles using the most current, scientifically valid methods to manage insect pests and vectors.

(b) Subject to subsection (a) of this section, the committee shall establish policies, standards and guidelines for programs receiving funds from the account under this article. In accordance with established program guidelines and policies, the committee shall review applications for participation submitted under this article, and based upon its review and evaluation, approve or disapprove program applications and if approved, establish the amount of program funding from the account.

(c) In addition to subsection (b) of this section, the committee shall, in cooperation with the governor, collect and compile data necessary to determine if emergency insect management programs under this article involve any threatened or endangered species under the federal Endangered Species Act of 1973, 16 U.S.C. 1531 et seq., as amended. If programs involve such species, the committee, in cooperation with the governor, shall request an exemption from federal regulation under this act for insect management purposes.

(d) The committee shall establish necessary procedures to process applications filed pursuant to this article.

(e) In addition to subsection (d) of this section, the committee shall annually report its activities for each fiscal period as required under W.S. 9-2-1014.

**11-5-405. Advisory assistance; assistance specified; expenses.**

(a) To assist with the establishment of policies, guidelines and the development of programs under this article, the committee may assemble necessary expertise from one (1) or more of the following organizations, institutions, groups or individuals:

- (i) The Wyoming county commissioners association;
- (ii) The Wyoming association of municipalities;
- (iii) Pesticide applicators;
- (iv) Landowners;
- (v) Agricultural producers;
- (vi) University of Wyoming faculty and staff;
- (vii) Scientific and technology industry representatives;
- (viii) Public representatives; and
- (ix) Other representatives or individuals as may be determined by the committee.

(b) Persons assisting the committee in an advisory capacity pursuant to subsection (a) of this section and not employed by the state nor any political subdivision of the state shall receive reimbursement for actual and necessary expenses and mileage allowance at the rates established by law for state employees.

**11-5-406. Program participation requirements; application; funding participation levels specified; restriction on expenditures.**

(a) Any state agency or political subdivision may apply to the committee for participation in emergency insect management programs under this article. Applications shall be filed with the department of agriculture and shall at minimum, substantiate compliance with standards and guidelines established by the committee.

(b) Emergency management program participation under this article shall be subject to the following requirements:

(i) Insect vector management programs or nonoutbreak insect programs shall receive not more than fifty percent (50%) of total program costs from the account;

(ii) Subject to paragraph (iii) of this subsection, a reactive program for the suppression of outbreaks of grasshoppers, Mormon crickets or other outbreak insects on state and private lands shall receive not more than fifty percent (50%) of total program costs from the account;

(iii) If the emergency insect management program under paragraph (ii) of this subsection is for grasshopper suppression, the program shall consist of treatments targeting infestations greater than two thousand (2,000) acres or those suppressing less than the entire infestation regardless of size;

(iv) Subject to paragraph (v) of this subsection, a proactive, preventative program targeting incipient infestations of grasshoppers, Mormon crickets or other outbreak insects on state and private lands, with the potential to expand into outbreaks, shall receive not more than seventy-five percent (75%) of total program costs from the account;

(v) If the emergency insect management program under paragraph (iv) of this subsection is for grasshoppers, the program shall include up to two thousand (2,000) acres if the entire infestation is included within the program;

(vi) During the first three (3) years of operation of any emergency insect management program, not more than twenty percent (20%) of funds provided to the program from the account shall be used for administrative costs, equipment and mapping activities, and not more than ten percent (10%) of such funds shall be used for these purposes in subsequent years;

(vii) In addition to paragraph (vi) of this subsection and during the first three (3) years of program operation, not more than twenty percent (20%) of funds provided from the account to any program shall be expended for applied research specifically designed to provide immediate results directly in support of improved integrated pest management practices, and not more than ten percent (10%) of such funds may be used for this purpose in subsequent years.

## CHAPTER 22

### BOARD OF CERTIFICATION WYOMING WEED AND PEST CONTROL LAW RULES OF PRACTICE & PROCEDURE FOR CONTESTED CASE HEARINGS

#### Section 1. **Authority.**

(a.) These rules are promulgated as required by the Wyoming Weed and Pest Control Law of 1957 (W.S. 11-5-101 through W.S. 11-5-303), hereinafter called the Act, and the Wyoming Administrative Procedures Act (W.S. 16-3-101 through W.S. 16-3-115) for the purpose of carrying out the intent of the Act and is applicable to all section of the Act.

#### Section 2. **Definitions.**

- (a.) Board: The Board of Certification established by W. S. 11-5-106.
- (b.) Proponent: The Board, or any other person or party who initiates or requests any action or decision, and may include complainant where applicable.
- (c.) Contestant: Any person who will be aggrieved or adversely affected by a proposed action of the Board and who requests a hearing before the Board, and may include the opponent or defendant where applicable.
- (d.) Party: Each person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party.
- (e.) Person: Any individual, partnership, association or organized group of persons whether incorporated or not.
- (f.) Rules of Civil Procedure: Those Wyoming Rules of Civil Procedure in effect at the time of the hearing.
- (g.) Hearing Officer: Designated hearing officer who shall preside over the hearing.

#### Section 3. **Notice of Proposed Action by the Board.**

- (a.) The Board may initiate any action which may result in a contested case in accordance with the Wyoming Administrative Procedure Act by:
- (i.) Giving written notice of proposed action either served personally or by certified mail, return receipt requested, to the person or persons who will be aggrieved or adversely affected thereby, or
- (ii.) Causing the publication in proper form, of a copy of the notices,

(1.) Said publication to be made in three newspapers of general circulation in the state.

(2.) Said publication to appear at least once a week for three consecutive weeks prior to the commencement of the action, the last publication to appear at least five days prior to the action.

(b.) A notice of proposed action by the Board shall include a statement of:

(i.) The nature of the proposed action.

(ii.) The particular rules, regulations, bylaws, and/or statutes which are involved.

(iii.) A short, plain statement of the matters asserted.

(iv.) The fact that a hearing may be requested within twenty days after the date of the mailing of the notice; and that if a hearing is not requested, the proposed action shall automatically take effect at the expiration of the twenty day period.

(c.) If a person makes a request for a hearing pursuant to this section, the request contain the information required by Section 4b.

(d.) Upon receipt of a request for hearing, the Board shall give the person making the request written notice by certified mail, return receipt requested of the time, place and nature of the hearing as well as the legal authority under which the hearing is being held.

#### Section 4. **Hearing Before the Board.**

(a.) Any person aggrieved or adversely affected in fact by the Board's action or decision, or who will be aggrieved or adversely affected in fact by the recommendation, may within twenty days after the date of the mailing of the notice of the action or decision or recommendation, request a hearing before the Board.

(b.) The request for hearing shall be directed to and served upon the Hearing Officer of the Board or the Director of the Department of Agriculture and shall show:

(i.) A request for hearing before the Board.

(ii.) The decision, or recommendation upon which a hearing is requested.

(iii.) A statement in ordinary, but concise, language of the reason for requesting a hearing.

(iv.) The address of the person making the request and the name and address of his attorney, if any.

(c.) Upon receipt of a request for hearing, the Board shall give the person making the request written notice of:

- (i.) The time, place and nature of the hearing.
- (ii.) The legal authority under which the hearing is to be held.
- (iii.) The particular rules, bylaws and/or statutes involved.
- (iv.) A short and plain statement of the matters asserted.

(v.) The written notice shall be served by mail addressed to the person making the request or his attorney.

(d.) The hearing shall be conducted as a contested case hearing.

#### **Section 5. Order of Procedure at Hearings.**

(a.) As nearly as may be, hearings shall be conducted in accordance with the following order of procedure.

(b.) The Hearing Officer shall announce that the Board is open to transact business and call by docket number and title the case to be heard.

(c.) The proponent will be allowed an opening statement to briefly explain its position to the Board and outline the evidence it proposes to offer, together with the purpose thereof.

(d.) The contestant will be allowed an opening statement.

(e.) Any additional parties will be allowed an opening statement.

(f.) The proponent's evidence will be heard. Witnesses may be cross-examined by the contestant or his attorney, by members of the Board and the Hearing Officer. The proponent's offered exhibits will be marked by letters of the alphabet, beginning with AA@.

(g.) The evidence of the contestant will be heard and exhibits of such will be marked with numbers, beginning with the number A1". The proponent or his attorney, each member of the Board, and the Hearing Officer, shall have the right to cross-examine all witnesses presented on behalf of the contestant.

(h.) Other parties may offer evidence.

(i.) The Hearing Officer may, in his discretion, allow evidence to be offered out of order, as herein prescribed.

(j.) Closing statements will be made in the following sequence:

(i.) Proponent

(ii.) Contestant

(iii.) Proponent's rebuttal if the Hearing Officer feels it is necessary.

(k.) The time for oral argument may be limited by the Hearing Officer.

(l.) The Hearing Officer may recess the hearing as required.

(m.) After all interested parties have been offered an opportunity to be heard, the Hearing Officer shall declare the evidence closed and excuse all witnesses.

(n.) The Hearing Officer may, at his discretion or the Board's request, allow or require parties to tender written briefs, and the time for filing such briefs shall be set by the Hearing Officer.

(o.) The Board may, at its discretion, appoint a designated Hearing Officer, who will preside as hearing officer during the course of such hearing; such designated Hearing Officer shall be an attorney licensed to practice law in the State of Wyoming.

(p.) The designated Hearing Officer shall, for purposes of that hearing, have all powers provided in W.S. 16-3-112(b).

(q.) The Hearing Officer may declare that the matter is taken under advisement and that the decision and order of the Board will be announced at a later date.

#### **Section 6. Applicable Rules of Civil Procedure.**

(a.) The Wyoming Rules of Civil Procedure shall apply in all hearings before the Board.

#### **Section 7. Attorneys.**

(a.) The filing of a pleading or other appearance by an attorney constitutes his appearance for the party for whom made. The Board must be notified in writing of his withdrawal from any matter. Any person appearing before the Board at a hearing in representative capacity shall be precluded from examining or cross-examining any witness, unless such person shall be an attorney licensed to practice law in the State of Wyoming, or a non-resident attorney associated with a Wyoming attorney.

#### **Section 8. Intervention.**

(a.) Any person interested in obtaining relief sought by a proponent or otherwise interested in the determination of a proceeding pending before the Board, may petition for leave to intervene in such proceeding prior to or at the time it is called for hearing, but not thereafter except for good cause shown. The petition shall set forth the grounds of the proposed intervention, the position and interest of the petitioner in the proceeding, and if affirmative relief is sought, the same should conform to the requirements for a formal complaint. Leave will not be granted except on allegations reasonable pertinent to the issue already presented and which do not unduly broaden them.

If leave is granted, the petitioner becomes an intervener and a party to the proceeding with the right to have notice of, and appear at the taking of testimony, to produce and cross-examine witnesses, and to be heard on the argument of the case.

#### **Section 9. Transcripts.**

(a.) Oral proceedings or any part thereof shall be transcribed on request of any party upon payment of the cost thereof. In case of an appeal to the District Court, the party appealing shall secure and file a transcript of the testimony and other evidence offered at the time of the hearing with the Board, which transcripts shall be verified by the oath of the reporter or transcribed as true and correct transcripts of the testimony and other evidence in the hearing. The cost of making the transcript shall be paid by the party prosecuting such appeal. The complete record on appeal, including the transcript of testimony, shall be verified by the clerk.

#### **Section 10. Decision and Order.**

(a.) The Board shall make a written decision and order in all cases, which decisions shall contain findings of fact and conclusions of law based exclusively on the evidence admitted at the hearing and matters officially noticed. The decision and order of the Board shall be placed in the record of the case which shall be retained by the board.

#### **Section 11. Record.**

(a.) The record in all cases shall include:

- (i.) All formal and informal notices.
- (ii.) Evidence received or considered including matters officially noticed.
- (iii.) Questions and offers of proof, objections and rulings thereon.
- (iv.) Any proposed findings and objections thereto.
- (v.) The decision and order of the Board.

#### **Section 12. Members of the Board Present.**

(a.) No member of the Board shall vote upon a decision of the Board unless he shall have been present at the hearing or has read the transcript of the proceedings. A decision by a majority of the members of the Board voting shall be the decision of the Board.

**Section 13. Appeals.**

(a.) Appeals from decisions of the Board are governed by the Wyoming Administrative Procedures Act and the Wyoming Rules of Appellate Procedure.

**Section 14. Transcript in Case of Appeal.**

(a.) In case of an appeal to the District Court as above provided, the party appealing shall secure and file with the Court a transcript of the testimony and all other evidence offered at the hearing, which transcript must be verified by the oath of the reporter who took the testimony as a true and correct transcript of the testimony and other evidence in the case. The compensation of the reporter for making the transcript of the testimony and all other costs involved in such appeal shall be borne by the party prosecuting such appeal.

# BOARD OF AGRICULTURE WEED AND PEST RULE

## CHAPTER 42

### Section 1. Authority.

(a) This Rule is promulgated pursuant to W.S. 11-5-119 of the Wyoming Weed and Pest Control Act of 1973, hereinafter called the Act, and the Wyoming Administrative Procedure Act for the purpose of carrying out the intent of the Act, and is applicable to all sections of the Act except W.S. 11-5-106 and 11-5-118.

### Section 2. Definitions.

(a) For the purpose of carrying out the intent of the Act the following definitions shall be considered.

(i) The term “Agency” shall mean any authority, bureau board, commission, department, division, officer, or employee of the federal government, the state, county, municipality, or other political subdivision of the state, except the state legislature and the judiciary.

(ii) The term “District-wide” means the area contained within the boundaries of a weed and pest control district, including all federal, state, private and municipally owned lands.

(iii) The term “Individual Quarantine” shall mean the area owned or controlled by one person or company or legal entity or agency in one weed and pest control district.

(iv) The term “Person” means any individual, partnership, association, or organized group of persons whether incorporated or not.

(v) The term “Section of the State” means any portion of one or more weed and pest control district(s) larger than an area owned or controlled by one person in one weed and pest district.

(vi) The term “State-wide” shall mean the area contained within the boundaries of the State of Wyoming.

(vii) The term “Visible Weed or Pest” shall mean weeds or pests or infestations thereof, capable of being seen; apparent; manifest; obvious.

### Section 3. Amendments to Designated List, W.S. 11-5-102.

(a) The procedures for amending the Designated List are as follows:

(i) A Person may propose an amendment for addition to or removal from the Designated List, which shall be presented in writing to the District Board;

(ii) The District Board shall approve or disapprove the proposed amendment by motion at its next regular scheduled meeting and, if approved, the complete file including the District Board's motion shall be presented to the Wyoming Weed and Pest Council;

(iii) The Wyoming Weed and Pest Council shall approve or disapprove the District Board's proposed amendment at its next regular scheduled meeting and, if approved, shall prepare a joint resolution to be signed by the president and presented to the Board. The Board shall also be provided the original file and the District Board motion;

(iv) The Board shall hold a public hearing to receive comments for the proposed amendment; and

(v) After public comments are received, the Board shall approve or disapprove the proposed amendment by motion at its next regular scheduled meeting. If the proposed amendment is approved, the president of the Board shall co-sign the joint resolution. The Board shall advise the Wyoming Weed and Pest Council of its action.

#### Section 4. Declared Pest and Declared Weed Program Participation Under W.S. 11-5-105(b)(vi).

(a) If a District Board desires to participate in Declared Pest and Declared Weed programs for the control of weeds and pests not included in the designated list as provided in W.S. 11-5-105(b)(vi), the procedure set forth in Section 3 shall be applicable except that the District Board shall hold a public hearing to receive comments for the species to be declared in their district and the weed or pest species shall not be added to the designated list.

#### Section 5. Landowner Damage Hearings.

(a) The District Board shall conduct all hearings referred to in W.S. 11-5-110.

#### Section 6. Request for Quarantine, General Requirements.

(a) Each request for a quarantine shall be accompanied by a sworn affidavit, which contains the following information:

(i) The area to be quarantined, if applicable;

(ii) Infested object, item or farm products, to be quarantined;

(iii) A statement that the Person requesting the quarantine has found the lands, object, item, or farm products to be infested by insects, pests, weed seed, poisonous or injurious plants, or plant diseases, and that the requesting person has a reasonable belief that the infested object, item, or farm products from those land, are liable to spread the weed or pest to the injury and detriment of the state;

(iv) The inspection and release procedures for the area or portion of the area, object, item or farm products; and

(v) The termination date of the quarantine, if such date is anticipated.

Section 7. State-wide Quarantine Against Importation of Farm Products, W.S. 11-5-116(a).

(a) Notwithstanding the Director's statutory authority under W.S. 11-5-116(a), if a Person residing within a District ascertains that insects, pests, weed seed, poisonous or injurious plants or plant diseases are likely to be introduced into Wyoming by the importation of the infected objects, items, farm products, or domestic animals and spread to the injury of others, the Person ascertaining such may file a request for quarantine with the District Board, if the Person provides such information as may be required by the District Board.

(b) The District Board shall approve or disapprove the request within forty-eight hours after the request has been properly filed and, if approved, the Director must be provided with a copy of the request and accompanying affidavit referred to in Section 6(i)-(v) and the District Board's minutes indicating the request for quarantine has been approved.

(c) Upon initial review of the Person's request and the District Board's approval, the Director shall without unnecessary delay declare a State-wide quarantine for twenty (20) days.

(d) The Director shall hold a hearing within twenty (20) days of the receipt of such individual request and District Board approval to determine if a State-wide quarantine should continue.

Section 8. Section of the State Quarantine to Prevent Transfer of Farm Products to Other Sections of the State, W.S. 11-5-116(a).

(a) Notwithstanding the Director's statutory authority under W.S. 11-5-116(a), if several districts desire a Section of the State to be quarantined, they shall provide the Director with the affidavit referred to in Section 6(a)(i)-(v), and the District Boards' minutes. These documents and a written request from the District Boards involved shall be provided to the Director with one letter of transmittal signed by the chairman of each District Board. The combined District Boards may request the Director to declare a Section of State quarantine for thirty (30) days and the Director shall do so without unnecessary delay.

(b) The District Boards involved shall hold a joint hearing not less than ten (10) days after notice of the hearing to continue the quarantine is published in a newspaper of general circulation in the section of the state to be quarantined. At such hearing the District Boards shall determine if the Director should continue the quarantine. If the District Boards determine the Director should continue the quarantine, they shall provide the Director with the original quarantine request, the individual District Board requests, the consolidated request, copies of the findings, conclusions and the final requests of the District Boards and copies of the hearing transcripts. Upon receipt of these items, the Director shall continue the quarantine.

(c) In the event the District Boards do not concur, those districts which do concur will transmit all documents to the Director by letter signed by all the concurring District Board chairmen. Upon receipt of such letter and documents, the Director shall convene a hearing in not less than ten (10) days of notice of the hearing to determine if the quarantine shall be continued.

Section 9. District-wide Quarantines to Prevent Movement of Farm Products to Other Sections of the State, W. S. 11-5-116(b).

(a) Districts seeking a quarantine under W.S. 11-5-116(b)(i) must follow the directions in that subsection.

(b) District-wide quarantines shall be declared by the Director when the requesting District Board provides the Director with the affidavit referred to in Section 6(a)(i)-(v), the initial request, and proof of compliance with W.S. 11-5-116(b)(ii) and (iii).

Section 10. Individual Quarantines to Prevent Movement of Farm Products to Other Sections of a District or the State, W.S. 11-5-116(c).

(a) The District Board shall notify the landowner in writing of its intent to quarantine the land or portion thereof. The notice shall describe the lands to be quarantined and shall contain a notice of time and place for a hearing before the District Board. Such hearing, unless waived in writing, shall be held not less than ten (10) days nor more than twenty (20) days from the date of such notice. At the hearing the District Board shall determine by resolution if a quarantine should be declared on such lands by the Director.

(b) If a District Board determines a quarantine should be declared by the Director, the District Board shall forward the request for quarantine, the affidavit required by Section 6(a)(i)-(v), a certified copy of the District Board's resolution adopted by a two-thirds (2/3) majority of the board requesting a quarantine, and a copy of the hearing transcript to the Director who shall declare a quarantine.

Section 11. District-wide Quarantine of Movement of Infested Farm Products and Equipment into a District, W.S. 11-5-116(d).

(a) District-wide quarantines under W.S. 11-5-116(d) shall be declared by the Director when the requesting District Board provides the Director with the affidavit referred to in Section 6(a)(i)-(v), the initial request, and proof of compliance with W.S. 11-5-116(b) and (d).

(b) If farm products and equipment are not certified as free from noxious weed seeds or pests or are not certified free from infested farm products that may be injurious and detrimental to the state, and no exceptions under W.S. 11-5-116(d)(i)-(iii) apply, then a District Board, its agent, or law enforcement may detain and inspect the vehicle and cargo carrying the farm products and equipment for visible weed and/or pest.

(c) After inspection by the District Board, its agent, or law enforcement and the finding of infested farm products or equipment, the person making the finding must do the following

(i) Inform the person in charge of the vehicle and/or the owner of the farm products or equipment of his findings;

(ii) Instruct the person in charge of the vehicle that the following remedial options are available:

- (A) Return the cargo or equipment to its point of origin;
- (B) Return the cargo or equipment to its point of origin or other designated site and clean the cargo or equipment to the point that no infestation is present;
- (C) Take the cargo to a processing plant to have the infestation rendered harmless and/or recleaned to the point that no infested farm products are present;
- (D) Change the destination of the cargo or equipment to a place where the infested farm products or equipment will not be detrimental; or

(E) Destroy the infested farm products in a manner that destroys the infesting agent; and

(iii) Inform the person in charge of the vehicle and/or owner of the infested farm products or equipment of the right to appear at a hearing before the District Board if the person disagrees with the proposed remedies presented or the identity of the infestation. The person may appear at the hearing in person or through counsel. A person may waive the right to a hearing in writing.

(A) In the event the person in charge of the vehicle does not comply with options as specified in Section 11(c)(ii) and requests a hearing before the District Board, the hearing shall be held to disagree with the remedies or the identification of the infestation.

(d) If the agent and/or district supervisor does not find infested farm products upon completion of inspection of the cargo or equipment, the agent and/or district supervisor shall give the person in charge of the vehicle a certificate showing no infested farm products or equipment were found and that the vehicle and cargo are released. The certificate should also contain the date, time, place, vehicle's cargo description, and origin and destination of the load;

(e) The procedures outlined in Section 11 may be followed for the inspection of infested farm product and equipment shipments in the district-wide quarantine, section-of-the-state quarantine, state-wide quarantine, and individual shipment quarantines.

Section 12. Quarantine of Individual Shipments of Infested Farm Products and Farm Equipment Into a District, W.S. 11-5-116(d).

(a) In the event that a District does not have a District-wide quarantine against the movement of infested farm products or equipment into a District under W.S. 11-5-116(d), but has a reasonable belief that infested farm products or equipment are entering the District that may be injurious and detrimental to the state, the District Board, its agent, or law enforcement may detain the vehicle containing such products and equipment and inspect the vehicle and cargo using the procedures outlined in Section 11(b)-(d).

(b) If the cargo is found to contain infested farm products or equipment the procedures in Section 11(c)(i)-(iii) shall be followed.

(c) In addition to a hearing for the reasons stated in Section 11(c)(iii), a hearing may also be held to determine if the infestation will be injurious and detrimental to the State.

(i) In the event the person in charge of the vehicle does not comply with the options as specified in Section 11(c)(ii) and waives his right to a hearing before the District Board, the waiver, the affidavit referred to in Section 6(a)(ii)-(v), and the request for a quarantine shall be forwarded to the Director who upon receipt thereof, shall declare a quarantine and request the person in charge to follow the remedial options.

(ii) In the event the person in charge of the vehicle does not comply with the options as specified in Section 11(c)(ii) and a hearing is held and the District Board determines a quarantine should be declared, the District Board shall adopt a resolution to that effect. The resolution shall be forwarded along with the affidavit referred to in Section 6(a)(ii)-(v) and the request for quarantine to the Director who upon receipt thereof shall declare the quarantine.

(d) If the agent and/or district supervisor does not find infested farm products or equipment, the procedure in Section 11(d) shall be followed.

### Section 13. Quarantine Termination Date.

(a) All quarantines, which do not contain a termination date, shall remain in effect until terminated by the same procedure under which the quarantine was initiated.

### Section 14. Hearings.

(a) All hearings shall be held in compliance with the Wyoming Administrative Procedure Act.

(b) Under Section 11 and 12, hearings before the District Board to disagree with remedial options, the identity of the pest, or the injurious and detrimental determination must be requested within twenty-four (24) hours of notification of the findings.

(c) Under Section 11 and 12, hearings before the District Board to disagree with the remedial options, the identity of the pest, or the injurious and detrimental determination, must be held within twenty-four (24) hours of receipt of the request for a hearing.

(d) All other hearings before a District Board can be requested at any time unless specified in the Rule and be held within the time frame allowed in accordance with the District Board's hearing rules and at the District Board's discretion.

## CHAPTER 44

### CERTIFICATION RULES & REGULATIONS FOR WEED & PEST SUPERVISORS

Section 1. Authority. Pursuant to the authority vested in the Board of Certification by virtue of Wyoming Statutes 11-69.1 through 11-69.21 and Wyoming Statutes 9-276.19 through 9-276.33, the following rules and regulations are hereby promulgated.

Section 2. Qualifications. Agricultural background with:

a. College degree, preferably with a major in agriculture and/or related field, who shall have satisfactorily completed courses in Entomology and Weed Science or their equivalent, from an accredited college or university, or;

b. High school graduate or its equivalent and in addition has two (2) years practical experience working in job-related fields of weed and pest operations, who shall have satisfactorily completed courses in Entomology and Weed Science or their equivalent, from an accredited college or university.

c. If the qualifications as specified in Section 2 a or b have been achieved, the person shall be deemed a certified supervisor under the Wyoming Weed and Pest Control Act of 1973. The certified supervisor will not be subject to additional testing and examinations under the act.

Section 3. Supervisors employed. Prior to promulgation shall be deemed certified supervisors if the following requirements have been met.

a. Have satisfactorily completed Entomology and Weed Science courses or their equivalent, from an accredited college or university.

b. If the qualifications as specified in Section 3 a have been achieved, the person shall be deemed a certified supervisor under the Wyoming Weed and Pest Control Act of 1973. The certified supervisor will not be subject to additional testing and examinations under the act.

c. If the requirements as specified in Section 3 a have not been achieved, the supervisor will be subject to testing and additional requirements as specified by the Weed & Pest Board of Certification under the act.

d. A passing grade of seventy percent (70%) shall be required. Answers to tests would be predetermined.

Section 4. Supervisors. Supervisors are required to attend at least one workshop and/or training course every two years to maintain their status.