

# 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.