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# **Model Weed Free Products Act**

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## INTRODUCTION

The mission of the North American Invasive Species Management Association (NAISMA) is to support, promote, and empower invasive species prevention and management across North America.



In collaboration with partners, NAISMA implements several international prevention initiatives, including the Certified Weed Free Products (WFP) Program, which aims to prevent the spread of invasive species through specific human-assisted pathways.

The WFP Program was first established in 1993 by local land managers in the western United States who recognized that noxious weeds were being transported and introduced to new areas through hay and feed used for cattle, horses, and other livestock. Their efforts led to the development of a voluntary certification system designed to ensure that certain agricultural and land management products do not contribute to the spread of invasive plants.

Today, the WFP Program provides land managers with assurance that invasive plants will not be introduced through the movement of forage, hay, straw, mulch, gravel, or compost brought onto their properties. NAISMA maintains science-based standards for the program, provides implementation guidance, facilitates communication among participating jurisdictions, and offers inspector certification training to support consistent program participation across regions.

Participation in the WFP Program requires the use of a Memorandum of Understanding (MOU), a nonbinding formal agreement between NAISMA and participating entities. Currently, there are 34 signatories to the WFP MOU representing 25 U.S. states and one Canadian province.

As the WFP Program continues to expand, legal and policy barriers have emerged that can complicate implementation. Laws governing invasive plants and noxious weeds vary significantly across the United States. Some states, particularly in the western U.S., where noxious weed management has long been a priority, have well-established regulatory programs addressing invasive species pathways. Other states have more limited regulatory frameworks. In some cases, agencies may have limited statutory authority to establish new programs like WFP. However, many states possess broader legislative authorities related to plant pests, noxious weeds, or invasive plants that could support the development of voluntary certification programs.

To support the advancement of the WFP Program, the National Sea Grant Law Center at the University of Mississippi School of Law received funding from NAISMA to develop a model legal framework for state WFP programs. This research was supported by the U.S. Fish and Wildlife Service, U.S. Department of the Interior, under award number F22AP03014-00.

The resulting Model Weed Free Products Act provides an example of what a comprehensive legislative framework or “gold standard” could look like for a state WFP program. Because nearly all states already have laws addressing invasive species and some pathways, such as horticulture or nursery products,

wholesale adoption of the Model Act may not be necessary in every jurisdiction. Instead, the Model Act may be adopted in full or in part, depending on each state's existing legal authorities and policy needs. It should be viewed as a flexible resource that states can reference when considering updates or additions to their invasive plant management frameworks.

For each section of the Model Act, suggested legislative language is provided along with an Explanatory Note. These notes describe the rationale for each provision and explain how it could be applied in practice, highlighting key considerations for states evaluating adoption. Reviewing these explanatory notes is important, as they provide additional context and insight into the intent and implementation of each section of the Model Act.

## I. PURPOSE

It is the policy of the legislature that residents of the state be protected from the injurious effects of invasive plants on agriculture, the environment, and public health. The purpose of this chapter is to promote incentives that benefit the people of this state and other states by producing and making available forage, gravel, mulch, compost and other materials free of invasive plants.

For the purposes of this chapter, weed free and weed free certification is understood to refer to the North American Invasive Species Management Association (NAISMA) weed free certification and minimum standards.

### *Explanatory Note:*

***Rationale:*** Although the inclusion of a purpose statement is not usually required by law, it is good drafting practice for state legislatures to do so. By expressly stating the purposes of the law, legislators can help clarify for state agencies, courts, and the public the legislative intent and factual, scientific, or policy rationale for passage of the law. Such guidance can be helpful for state agencies as they develop regulations to implement the law's provisions and courts called upon to resolve disputes.

***Application:*** This section establishes that the WFP program is being authorized to address the environmental and economic threat from invasive plants. Invasive species terminology varies across states and species of concern may be classified as noxious weeds, exotic, non-native, or pests. The term "invasive plant" is used in the Model Act to enhance readability and general understanding regarding the scope of the provisions. The language above may need to be altered to align with existing species classifications in a particular state.

This section also establishes that the state's weed free certification program must follow the NAISMA protocols and standards. This is necessary to facilitate interstate transport and the acceptance of out-of-state documentation.

## II. DEFINITIONS

"Certificate" means a document issued or authorized by the Department indicating that an eligible product is weed free.

"Certification marking" means twine, wire, tag, or label attached to eligible products as proof of certification.

"Invasive plant" means any species prohibited by the Department, as well as any species included on the NAISMA Weed Free Prohibited Species List.

“**Product**” means any agricultural crop or non-agricultural commodity capable of carrying invasive plants, including but not limited to forage, mulch, gravel, and compost.

“**Propagules**” mean any part of a plant capable of enabling it to reproduce (may include seeds, roots, and/or stolons).

“**Weed free**” means any product certified as free of invasive plant propagules by the Department pursuant to this chapter.

### ***Explanatory Note:***

***Rationale:*** Definitions are important for providing clarity, especially if unfamiliar terms are used or if familiar terms are used in unfamiliar ways. Ordinary words used in a manner that is consistent with their everyday meaning do not need to be defined. If key terms have already been defined through previous legislative acts, cross-references may be provided to maintain consistency. A review of existing definitions should be undertaken during the drafting process to ensure consistency, avoid duplication, and identify terminology gaps.

***Application:*** The definitions provided in this Model Act are for certain terms of art used in the context of the NAISMA WFP Program for which a common understanding is necessary to provide interstate consistency. These are drafted as restricted definitions intended to limit the use of the terms to the specific context of the WFP Program. However, some states may have similar terminology and definitions present in existing law that they wish to align with the WFP Program. In such cases, the definitions would be more broadly applicable.

## **III. ESTABLISHMENT OF WEED FREE PRODUCTS PROGRAM**

- A. The Director [of designated state agency] may, by regulation, establish and administer a program to certify products as weed free to support the control and prevention of the spread of invasive plants in this State and to allow businesses in this State to market those products in compliance with the guidelines set forth by the North American Invasive Species Management Association, any applicable federal law or regulation, or any other requirement specified by the Director.
- B. The Director shall adopt rules and regulations pursuant to [relevant state administrative process chapter] to carry out the provisions of this chapter and shall include, but not be limited to, rules concerning:

1. Designation of prohibited invasive plants;
2. Procedures for certification of weed free products in adherence with the standards of the North American Invasive Species Management Association;
3. Qualification standards for persons seeking designation as qualified inspectors;
4. Inspection procedures;
5. Treatment procedures to reduce the risk of dissemination of invasive plant propagules;
6. Procedures for identifying and tracking certified weed free products, including the issuance of certification markings; and
7. Reasonable fees for obtaining certification.

### ***Explanatory Note:***

***Rationale:*** State legislatures enact statutes that contain broad mandates and create the framework for addressing a particular policy issue. State executive agencies then carry out these laws through the development, implementation, and enforcement of more detailed regulations in accordance with state administrative procedures. An explicit grant of rulemaking authority by the state legislature establishes legislative intent to empower the relevant executive agency to create legally binding regulations to implement statutory directives.

***Application:*** To successfully implement a WFP program, the responsible state agency needs to determine the desired protocols and processes for a range of program activities including designation and training of inspectors, inspection of products, issuance of certification and transit forms, and payment of fees. The agency also needs to determine what invasive plants should be added to the state's prohibited species list and therefore not be allowed in certified weed free products. The state's list should incorporate the NAISMA Appendix A list of species by reference for the purposes of WFP certification. These processes should be outlined in agency regulations to provide transparency and opportunities for public comment.

## **IV. POWERS AND DUTIES**

To carry out the purposes of this chapter, the Director may

- A. Conduct inspections of products, including the field or area of origin, to determine if products are free of invasive plant propagules.
- B. Designate individuals to serve as qualified inspectors.
- C. Issue weed free certifications and certification markings for products in compliance with Department standards and processes.

- D. Issue transit certificates to facilitate the interstate movement of weed free products.
- E. Establish and assess fees to support the cost of administering the weed free products program.
- F. Enter into agreements with any agency of this state or its political subdivisions, other states, federal agencies, universities, nonprofit organizations, or other parties to carry out the weed free products program.

### ***Explanatory Note:***

***Rationale:*** Under the separation of powers doctrine, one branch of state government (executive, legislative, and judicial) is generally prohibited from exercising powers belonging to another branch. In theory, the legislative branch is responsible for enacting the laws of the state, which are then implemented by the executive branch subject to judicial oversight. In reality, powers often overlap and delegation of lawmaking power to the executive branch is often desirable, especially with complex environmental problems. Through the delegation of lawmaking power, the state legislature can leave the development of detailed policies to the subject matter experts working within state administrative agencies. This section sets forth the specific powers and duties the state legislature is delegating to the appropriate agency department.

***Application:*** This Section provides the designated agency or department with the necessary legislative authority to develop and implement an effective WFP program. That said, enacting a given authority into law does not necessarily obligate or require the agency or department to implement the authorized activities. It merely provides the state with the authority to implement such activities when desired and human or financial resources are available.

*The ability to delegate lawmaking authority to the executive branch varies by state. Many states require that the statute delegating authority provide clear guidance to the administrative agency as to what regulations are required to implement the statutory authority and what those regulations may or may not contain (See Section III above). In other states, a general legislative statement of policy may be considered sufficient to guide the agency. The language recommended above may need to be altered in a particular state to ensure effective delegation.*

*To effectively implement WFP programs and facilitate interstate transport, a system needs to be in place to establish and record the inspection and certification status of particular products. This section authorizes the responsible state agency or department to develop a certification system to provide information to future inspectors.*

*The NAISMA WFP Committee requires the use of a Memorandum of Understanding (MOU) to participate in the WFP Program. An MOU is a document that outlines the framework of a partnership or collaboration between two or more parties. The NAISMA MOU is used to formalize the relationship between NAISMA and the designated authority for the WFP Program, and to ensure that both parties have a clear understanding of their respective responsibilities and obligations.*

## V. CERTIFICATION

To obtain weed free product certification, a person shall make an annual application to the Department. The person shall comply with all certification standards and processes and pay any required fees prior to receiving certification approval and certification markers for the product. Certificates of inspection and transit shall be issued on forms prescribed by the Department.

### *Explanatory Note:*

**Rationale:** *Individuals seeking voluntary certifications of their products must typically fulfill requirements such as meeting eligibility criteria, completing application forms, and agreeing to program-specific codes of conduct. Many voluntary certification programs also require annual renewal and payment of set fees. This section sets forth the responsibilities and obligations of individuals seeking WFP certification.*

**Application:** *As WFP certification is voluntary, the inspection and certification must be initiated by interested producers. The process for how producers can obtain certification for applicable products should be clearly communicated. The baseline requirements for obtaining WFP certification, including compliance with program standards and payment of fees, should be explicitly stated to provide a foundation for application denial or enforcement action. Details of the certification process should be set forth in regulations, but states may wish to add more specific language in legislation regarding producer responsibilities related to certification processes. For example, states may wish to also include language to notify producers seeking certification that they must allow program representatives to enter onto private property to conduct inspections and examine records.*

## VI. DELEGATION OF DUTIES

The Director may delegate in writing its authority, or any part thereof, under this chapter to any instrumentality or entity whose principal purpose is to establish and maintain a uniform and reasonable system of inspection and certification of crops, plants, plant parts or products thereof. Any agent designated under the terms of this provision shall be a servant of the state and shall act in an official capacity for the state and under the supervision of the Director consistent with this chapter.

### ***Explanatory Note:***

***Rationale:*** Delegation in some form is a necessity in any organization, including state agencies. Agency heads have limited time, and some responsibilities must be handled by staff. Such internal staff assignments are usually accompanied by structures and processes to coordinate institutional decisionmaking. At times, it may be desirable for an agency head to formally subdelegate administration of a program to another entity due to staffing or resource constraints. Such subdelegations should be authorized by law.

***Application:*** Many existing WFP programs are run by state crop improvement associations or similar entities. This provision authorizes the use of such arrangements and provides clear state oversight for the selection of the third-party entity and program implementation.

## **VII. PROHIBITED ACTS**

It is unlawful for a person to certify or sell as certified any product as weed free within this state, unless the product is identified under the Department-approved process and the product meets all the requirements of this chapter. A person may not designate a product as certified or use any other title, designation, words, letters, abbreviations, sign, card, or identifier tending to indicate that the product is certified unless the product meets all the requirements of this chapter.

### ***Explanatory Note:***

***Rationale:*** Consumer confidence in voluntary certification programs can be undermined by deceptive and fraudulent business practices, which may include the unauthorized use of certification marks on products, fabrication of certificates, or misleading advertising. Such misrepresentations obstruct the ability of purchasers to make genuinely informed decisions and harm reputable companies who have invested time and money into obtaining real certification for their products.

***Application:*** This provision is designed to protect the integrity of the WFP program by establishing that the false representation of products as certified WFP is against the law. It also prohibits the unauthorized certification of products to protect the system of state-designated and -trained inspectors. When fraud is detected, the responsible agency should have the authority to suspend or revoke the certification of the fraudulent operation and impose financial penalties (See Sections IX and X).

## VIII. REQUIREMENT TO USE WEED FREE PRODUCTS

- A. Any forage, mulch, compost, or gravel carried onto or used for any purpose within the boundaries of any lands owned or managed by the state and its agencies must be certified weed free.
- B. All applicable products used by public utilities and local, county, or state agencies, including but not limited to forage, mulch, gravel, and compost, must be certified as weed free.

### *Explanatory Note:*

**Rationale:** Governments can support voluntary certification programs by requiring the use of certified products in specific contexts, primarily through government procurement policies and regulatory mandates in areas of public interest like environmental protection. Government requirements can increase consumer awareness of and demand for certified products and encourage more producers to comply with the standards.

**Application:** Certified forage is required on many federal public lands to prevent the spread of invasive plants and meet agency regulations. Some states have similar provisions that require the use of certified forage in state parks or other recreational lands. This provision suggests a broader requirement that mandates the use of certified forage, mulch, compost, or gravel on any state owned or managed lands to reflect the full range of products potentially eligible for certification under the NAISMA WFP Program. The Model Act also requires that governmental agencies use certified products in their public works and other projects, such as landscaping and road maintenance. The scope of these provisions could be narrowed if a state does not implement a program for one of these product categories.

## IX. ENFORCEMENT

- A. The Department is authorized to revoke any weed free certification for violations of this chapter, violations of Department rules adopted under this chapter, or any violation of weed free product certification standards or processes.
- B. When the Department has reasonable cause to believe that a person is selling, distributing, storing, transporting, or using products in violation of any of the provisions of this chapter, a written stop sale, use, or removal order may be issued to that person. The product may not be sold or used until compliance with the provisions of this chapter is achieved. The Department may require that the product be sold or used only as an uncertified product or delivered back to the seller, or the Department may order condemnation of any product that does not meet the requirement of this part or other alternatives established by rule.

### ***Explanatory Note:***

***Rationale:*** Enforcement mechanisms are essential for creating a system of accountability and consequences for non-compliance within voluntary certification programs. Weak enforcement can erode public trust in governmental programs and undermine the intended purposes of the legislation. The role of enforcement is to deter violations and hold violators accountable thereby ensuring the integrity of the certification program and promoting fair markets.

***Application:*** While participation in a WFP program is voluntary, the effectiveness of a state's WFP program depends on industry compliance with the protocols and standards. Businesses that are not adhering to the program standards should not be allowed to benefit from the program. Mechanisms should be in place that enable the designated authority to take action to punish non-compliance, which may include revoking certifications or stopping the sale of out-of-compliance products.

## **X. PENALTIES**

A person who violates any of the provisions of this chapter or any rules or orders of the Department adopted under this chapter is subject to the following penalties:

- A. A civil penalty of not more than [dollar amount] for each offense. Assessment of a civil penalty by the Department may be made in conjunction with any other warning, order, or administrative action authorized by this part that is issued by the Department.
- B. A misdemeanor penalty of not less than [dollar amount] or more than [dollar amount] or up to [number of months] imprisonment, or both.

### ***Explanatory Note:***

***Rationale:*** Enforcement is an essential component of any legal framework, as violations of the law will occur and need to be addressed. The imposition of penalties punishes noncompliance and serves as a deterrent to future violations. Enforcement can be civil, criminal, or both. This section sets forth the enforcement mechanisms available to respond to violations.

***Application:*** The penalty framework will vary by state, as a number of policy choices must be made. Authorizing both civil and criminal enforcement provides the greatest amount of flexibility to enforcement personnel in responding to violations.

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## **APPENDIX**

### **MODEL WEED FREE PRODUCTS ACT**

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#### **I. PURPOSE**

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“**Certificate**” means a document issued or authorized by the Department indicating that an eligible product is weed free.

“**Certification marking**” means twine, wire, tag, or label attached to eligible products as proof of certification.

“**Invasive plant**” means any species prohibited by the Department, as well as any species included on the NAISMA Weed Free Prohibited Species List.

“**Product**” means any agricultural crop or non-agricultural commodity capable of carrying invasive plants, including but not limited to forage, mulch, gravel, and compost.

“**Propagules**” mean any part of a plant capable of enabling it to reproduce (may include seeds, roots, and/or stolons).

“**Weed free**” means any product certified as free of invasive plant propagules by the Department pursuant to this chapter.

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#### **III. ESTABLISHMENT OF WEED FREE PRODUCTS PROGRAM**

- A. The Director [of designated state agency] may, by regulation, establish and administer a program to certify products as weed free to support the control and prevention of the spread of invasive plants in this State and to allow businesses in this State to market those products in compliance with the guidelines set forth by the North American Invasive Species Management Association, any applicable federal law or regulation, or any other requirement specified by the Director.

- B. The Director shall adopt rules and regulations pursuant to [relevant state administrative process chapter] to carry out the provisions of this chapter and shall include, but not be limited to, rules concerning:
1. Designation of prohibited invasive plants;
  2. Procedures for certification of weed free products in adherence with the standards of the North American Invasive Species Management Association;
  3. Qualification standards for persons seeking designation as qualified inspectors;
  4. Inspection procedures;
  5. Treatment procedures to reduce the risk of dissemination of invasive plant propagules;
  6. Procedures for identifying and tracking certified weed free products, including the issuance of certification markings; and
  7. Reasonable fees for obtaining certification.

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#### **IV. POWERS AND DUTIES**

To carry out the purposes of this chapter, the Director may

- A. Conduct inspections of products, including the field or area of origin, to determine if products are free of invasive plant propagules.
- B. Designate individuals to serve as qualified inspectors.
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- D. Issue transit certificates to facilitate the interstate movement of weed free products.
- E. Establish and assess fees to support the cost of administering the weed free products program.
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#### **V. CERTIFICATION**

To obtain weed free product certification, a person shall make an annual application to the Department. The person shall comply with all certification standards and processes and pay any required fees prior to receiving certification approval and certification markers for the product. Certificates of inspection and transit shall be issued on forms prescribed by the Department.

## **VI. DELEGATION OF DUTIES**

The Director may delegate in writing its authority, or any part thereof, under this chapter to any instrumentality or entity whose principal purpose is to establish and maintain a uniform and reasonable system of inspection and certification of crops, plants, plant parts or products thereof. Any agent designated under the terms of this provision shall be a servant of the state and shall act in an official capacity for the state and under the supervision of the Director consistent with this chapter.

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## **VIII. REQUIREMENT TO USE WEED FREE PRODUCTS**

- A. Any forage, mulch, compost, or gravel carried onto or used for any purpose within the boundaries of any lands owned or managed by the state and its agencies must be certified weed free.
  - B. All applicable products used by public utilities and local, county, or state agencies, including but not limited to forage, mulch, gravel, and compost, must be certified as weed free.
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## **IX. ENFORCEMENT**

- A. The Department is authorized to revoke any weed free certification for violations of this chapter, violations of Department rules adopted under this chapter, or any violation of weed free product certification standards or processes.
  - B. When the Department has reasonable cause to believe that a person is selling, distributing, storing, transporting, or using products in violation of any of the provisions of this chapter, a written stop sale, use, or removal order may be issued to that person. The product may not be sold or used until compliance with the provisions of this chapter is achieved. The Department may require that the product be sold or used only as an uncertified product or delivered back to the seller, or the Department may order condemnation of any product that does not meet the requirement of this part or other alternatives established by rule.
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## **X. PENALTIES**

A person who violates any of the provisions of this chapter or any rules or orders of the Department adopted under this chapter is subject to the following penalties:

- A. A civil penalty of not more than [dollar amount] for each offense. Assessment of a civil penalty by the Department may be made in conjunction with any other warning, order, or administrative action authorized by this part that is issued by the Department.
- B. A misdemeanor penalty of not less than [dollar amount] or more than [dollar amount] or up to [number of months] imprisonment, or both.