

Model Legal Framework
for the
Certified Weed Free Products Program



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INTRODUCTION

The mission of the North American Invasive Species Management Association (NAISMA) is to empower invasive species prevention and management in North America. NAISMA and its partners implement several international prevention programs, including Certified Weed Free Products (WFP), aimed at stopping the spread of invasive species through specific human-assisted pathways. The program was first established in 1993 by western local land managers that were aware that noxious weeds were being transported and introduced to new sites through hay and feed for cattle, horses, and other animals.



The WFP Program provides land managers with assurance that invasive plants will not be spread through the movement of forage, hay, straw, mulch, gravel, or compost brought into a property. NAISMA maintains science-based standards, provides guidelines for implementation, facilitates communications among stakeholders, and provides inspector certification training to empower consistent participation across jurisdictions. NAISMA requires the use of a Memorandum of Understanding (MOU), a nonbinding formal agreement, to participate in the WFP Program. There are currently 34 signatories of the WFP MOU from 25 states and 1 Canadian province.

As the WFP Program expands across the country, legal and policy barriers have emerged that impede implementation. Invasive plant laws across the country are very diverse. Some jurisdictions, especially in the west where noxious weeds have been a management priority for decades, have extensive regulatory programs to address the spread of unwanted species. Other jurisdictions have limited regulation. The limited scope of agency authority in some states and provinces makes it difficult to launch new WFP programs. However, most jurisdictions have broad legislative mandates and authorities related to plant pests, noxious weeds, or invasive plants that relevant agencies can draw upon to offer a voluntary certification program.

To advance the WFP Program standards, 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 WFP programs. The model legal framework consists of two parts: the Model Weed Free Products Act and model implementing regulations. The Model Weed Free Products Act provides an example of what a “gold standard” legislative package might look like for a WFP program. Almost all jurisdictions have some legislation addressing invasive species threats and many have laws touching on some plant pathways, including horticulture and nurseries. As such, wholesale verbatim adoption of the Model Act may not be necessary in every state or province. The Model may be adopted in full, or in part, as applicable.

The model implementing regulations explore how details regarding the roles, processes, and standards essential to effective WFP program implementation could be added to the legislative framework through rulemaking. For a voluntary program like the WFP Program, formal rulemaking may not be necessary for the agency to carry out or delegate program activities. However, publishing regulations

allows agencies to use their expertise to adopt enforceable technical standards to guide program implementation, increase transparency in government decision-making, and provide opportunities for public engagement. Rulemaking may also be required in some states and provinces to exercise certain authorities, such as the imposition of service fees, or to describe in detail how agencies will implement programs and enforce the broad objectives of laws.

The Model Legal Framework for the Certified Weed Free Products Program should be viewed as a flexible resource that states and provinces can reference when considering updates or additions to their invasive plant management frameworks to incorporate a WFP program. For each section of the Model Act and model implementing regulations, suggested legislative or regulatory language is provided followed by an Explanatory Note. These notes describe the rationale for each provision and explain how it could be applied in practice, highlighting key considerations for jurisdictions 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 and regulations.

Model Weed Free Products Act

I. PURPOSE

It is the policy of the legislature that residents of the [state/province] 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/province] and other states and countries 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 or provincial legislatures to do so. By expressly stating the purposes of the law, legislators can help clarify for 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 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 jurisdictions 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 jurisdictions.*

This section also establishes that the jurisdiction'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 in accordance with weed free product standards.

“Certification marking” means twine, wire, tag, label, mark, or emblem affixed to eligible products as proof of certification.

“**Invasive plant**” means any species prohibited by the Department, as well as any species included on the North American Invasive Species Management Association 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 interjurisdictional 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 jurisdictions 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 Department] 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/province] and to allow businesses 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/province 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 approved 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: Legislatures enact statutes that contain broad mandates and create the framework for addressing a particular policy issue. Executive agencies then carry out these laws through the development, implementation, and enforcement of more detailed regulations in accordance with state or provincial administrative procedures. An explicit grant of rulemaking authority by the 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 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 jurisdiction's prohibited species list and therefore not be allowed in certified weed free products. That 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 approved 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/province] or its political subdivisions, other [states/provinces], 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 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 or province, 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 legislature can leave the development of detailed policies to the subject matter experts working within administrative agencies. This section sets forth the specific powers and duties the 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 agency 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 jurisdiction. Many jurisdictions 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 others, 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 jurisdiction 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 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 markings 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 jurisdictions may wish to add more specific language in legislation regarding producer responsibilities related to certification processes. For example, states or provinces 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/province] and shall act in an official capacity for the [state/province] 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 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 decision-making. 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 or provincial 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/province], 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/provincial-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/province] and its agencies must be certified weed free.
- B. All applicable products used by public utilities and local, county, or [state/province] 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 in the United States to prevent the spread of invasive plants and meet agency regulations. Some jurisdictions 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/provincial 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 jurisdiction 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 jurisdiction'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 jurisdiction, 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.

Model Implementing Regulations for the Model Weed Free Products Act

I. PURPOSE

The Weed Free Products Program is a voluntary program managed by [the designated state/province Department] authorized by [the Model Weed Free Products Act]. The purpose of the Weed Free Products Program is to encourage the production of forage, gravel, mulch, compost, and other materials free of invasive plants to reduce the spread of such species and meet consumer demand for weed free products. These regulations set forth the program standards and protocols for the preparation of inspection and transit certificates to facilitate the marketing, sale, and interjurisdictional transport of weed free products.

Explanatory Note:

***Rationale:** Depending on a jurisdiction’s regulatory style guide, a purpose section may not be needed. However, a purpose section is required in some jurisdictions and provides an opportunity to explain the legislative authority and intent behind promulgating regulations, the issues or circumstances the regulation is meant to address, as well as its scope and objectives. The purpose section can also emphasize the connection of specific regulations to a larger legal framework or policy.*

***Application:** This section provides key information about the justification and goals of the Weed Free Products Program regulations. Jurisdictions establish WFP programs to reduce the risk of invasive plant spread through the sale and distribution of certain products. The purpose statement connects the WFP program to a jurisdiction’s wider invasive species policy goals, while recognizing the voluntary nature of the program. These statements should guide how the remainder of the regulatory text is interpreted. Throughout the model regulations, references to the Model Weed Free Products Act are included where a cross-reference to a jurisdiction’s WFP program statutory authority may be helpful.*

II. DEFINITIONS

The following words and terms, when used in this [Chapter, Subchapter, Part], shall have the following meaning

- A. **“Approved Inspector”** means an individual who has been accredited by the Department or by the Department’s agent in accordance with NAISMA training standards to conduct weed free product inspections.

- B. **“Compost”** means a product that is manufactured through the controlled aerobic, biological decomposition of biodegradable materials. The product has undergone mesophilic and thermophilic temperatures, which significantly reduces the viability of pathogens and weed seeds (in accordance with EPA 40 CFR 503 standards) and stabilizes the carbon such that it is beneficial to plant growth.
- C. **“Department”** means [the designated state/province Department].
- D. **“Forage”** means any crop, including alfalfa, grass, small grains, straw, and similar crops and commodities, that is grown, harvested, and sold for livestock forage, bedding material, or mulch related uses and the byproducts of those crops or commodities that have been processed into pellets, cubes, or related products.
- E. **“Gravel”** means small stones or pebbles, or a mixture of these with sand, stone, and gravel as well as recycled concrete and asphalt materials.
- F. **“Inspection certificate”** means a form completed by an Approved Inspector indicating that an eligible product is weed free in accordance with weed free product standards as set forth in this chapter.
- G. **“Mulch”** means any material or mix of materials that consists of a combination of vegetation, and/or synthetic products that is manufactured as a whole, or has each of its component parts source certified according to the NAISMA standard, to ensure the material is not a source of weed seeds or live vegetative propagules, and that is used for temperature, moisture, and/or erosion control, weed suppression, or aesthetic purposes, and is applied solely as a surface treatment.
- H. **“NAISMA”** means the North American Invasive Species Management Association.
- I. **“Transit certificate”** means a form completed by an Approved Inspector indicating that an eligible product in transit is weed free in accordance with weed free product standards as set forth in this chapter.

Explanatory Note:

Rationale: A definition section serves to provide the meaning of key terms as used in the regulation. The purpose of a definition should be to achieve clarity and consistency within a regulatory program. Definitions of terms defined elsewhere in statutes or regulations may be incorporated by reference. A definition may be needed to define unfamiliar words or phrases or restrict the meaning of familiar words or phrases for use in a specific context.

Application: The Model Weed Free Products Act contains six definitions relevant to the WFP program: certificate, certification marking, invasive plant, product, propagules, and weed free. These terms are not repeated here. Rather, this section provides definitions for additional key terms that are central to the implementing regulations including the four product categories. These product definitions are drawn from NAISMA WFP Program standards but could be modified to meet existing jurisdictional definitions if necessary to avoid confusion or conflict. Existing definitions should be cross-referenced, or an explicit statement could be added to clarify that the definition applies only to this specific section. States and provinces may want to consult industry sources, such as the Soil Science Society of America, for alignment of product definitions with pre-existing industry standards.

III. DESIGNATION OF PROHIBITED INVASIVE PLANTS

- A. The Department pursuant to [relevant statutory authority] hereby declares the following species as an invasive plant.
 - i. [list of species.]
- B. The Department shall prepare, publish, and revise as necessary the list of invasive plants. The list must be distributed to the public by the Department through publication on the agency's website and other reasonable means.

Explanatory Note:

Rationale: Invasive plant management is commonly guided by the development of lists of species considered harmful to the environment, economy, and human health whose introduction, possession, and trade should be controlled. The terminology and designation process for invasive plants varies widely among jurisdictions. Species may be designated as, among other classifications, prohibited species, invasive plants, or noxious weeds by legislation or regulation. Prohibited species lists provide the foundation for inspection programs as they establish the scope of the inspection.

Application: *The Model Weed Free Products Act provides the relevant agency with the authority to designate prohibited invasive plants for the purposes of the jurisdiction's WFP program. In developing the prohibited invasive plant list, agencies may need to include plants designated as invasive by statute or other agencies. The state/province's prohibited species list should also incorporate the NAISMA Appendix A list by reference to ensure consistency with NAISMA program standards. In the United States, states should also incorporate the federal noxious weed list by reference. This section also includes a provision requiring public access to the list of invasive plants, which is necessary for transparency, awareness, implementation and enforcement of the program.*

IV. CERTIFICATION PROGRAM

- A. The Department is the certifying authority for weed free products in the jurisdiction.
- B. The Department designates [entity] to serve as an agent for the purpose of implementing this program.
- C. The Department or its agents will:
 - i. Coordinate weed free products inspections within the [state/province].
 - ii. Select, train, and supervise persons who serve as Approved Inspectors.
 - iii. Issue inspection certificates, transit certificates, and certification markings.
 - iv. Maintain a record of inspections performed and certificates issued.

Explanatory Note:

Rationale: *The administrative structure of WFP programs varies across the country. WFP programs may be run by agencies, local governments, or third-party associations, such as crop improvement associations. The purpose of this section is to identify the entities responsible for carrying out key functions related to implementation of the WFP program and make any desired delegations of authority.*

Application: *The Model Weed Free Product Act envisions a WFP certification program housed within an agency. The model regulations reinforce this structure by stating that the certifying authority is the Department. The Act authorizes the Department to delegate duties "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." If such delegation is desired, the selected third-party entity should be designated as an agent in the regulation and the scope of delegated authority outlined. Four key aspects of certification program management are highlighted: training of inspectors, coordination of inspections, issuance of certificates, and record-keeping.*

V. DESIGNATION OF INSPECTORS

- A. Only Approved Inspectors may certify products as being weed free.
- B. Each person seeking designation as an Approved Inspector must meet minimum training and accreditation standards as established by the Department or its agent.
- C. Approved Inspectors must:
 - i. Successfully complete and maintain an active certification for the NAISMA Certified Weed Free Products Inspector Certification Course;
 - ii. Attend a training provided annually by the Department or its agent that will include, but not be limited to, the following topics:
 - 1. [State/Province] invasive plant laws and regulations;
 - 2. Department invasive plant lists;
 - 3. Department inspection and certification standards and guidelines;
 - 4. [State/Province]-approved invasive plant management and control techniques.

Explanatory Note:

Rationale: To effectively implement a WFP program, products must be inspected in order to be certified. Inspectors need to be qualified to identify designated invasive plants and be up to date on their jurisdiction's laws and regulations. Inspectors also must know how to control invasive plant species if discovered in order to provide guidance to applicants. This section establishes a uniform baseline of expertise for Approved Inspectors.

Application: The NAISMA Certified Weed Free Products Inspector Certification Course is an asynchronous, professional, online program designed to provide inspectors with the training necessary to certify forage, gravel, mulch, or compost to the international WFP standards. The full course takes approximately 6 hours to complete. NAISMA WFP memorandum of understanding holders pay an annual fee to enroll inspectors in the NAISMA course. Many jurisdictions choose to supplement the NAISMA course with annual state/province-specific training. Such training can address local legislation, geographic differences, and unique industry conditions. This section sets forth these two basic training requirements, with some suggested topics for annual training.

VI. INSPECTION PROCEDURES

- A. A producer of products who wishes to have products certified as weed free must submit an inspection request form. Upon receipt of the inspection request form and verification of applicant eligibility, the Department or its agent will arrange for an inspector.
- B. Inspectors are to follow NAISMA standards, which are hereby incorporated by reference. The following documents are incorporated by reference:
 - i. The NAISMA Certified Weed Free Forage Minimum Standards, Appendix E: Field Inspection Standards and Minimum Guidelines for Field Inspections, as published at <https://drive.google.com/file/d/1kVLu5ZKmQaZRZ4qO4RF4sye1ZB3Ud4aB/view>
 - ii. The NAISMA Certified Weed Free Products Gravel Minimum Standards, Appendix C: Minimum Guidelines for Active Material Pit Inspections, as published at <https://drive.google.com/file/d/1WmRPBt2Ftrdo9sDpWtlkxLoJdWRCMCiq/view>
 - iii. The NAISMA Certified Weed Free Products Mulch Minimum Standards, Appendix D: Standards and Minimum Guidelines for Field Inspections, as published at <https://drive.google.com/file/d/1boqPzVyC3Itc2ru7hnxGPbKjuebxmXyy/view>
 - iv. The NAISMA Certification Weed Free Products Compost Minimum Standards, Appendix D: Standards and Minimum Guidelines for Field Inspections, as published at https://drive.google.com/file/d/16bhRaMFzuK7aUaN7_0eOK_LVl6nsEliG/view
- C. After completing an inspection, the Approved Inspector will complete an inspection certificate and deliver a paper or electronic copy of the form to the applicant.
- D. A transit certificate may be completed by an Approved Inspector at the time of inspection at the request of an applicant intending to ship certified products out of [state/province].

Explanatory Note:

Rationale: This section outlines the process applicants must follow to request an inspection and how the inspection will be conducted. For NAISMA to recognize a WFP certification, inspections must meet minimum standards set forth in WFP Program documents. These guidelines explain how and when to inspect products for invasive plant species and what information to include on the inspection certificate. In some situations, interstate shipments of certified products must be accompanied by a transit certificate issued by the certifying entity in the state or province of origin.

Application: Jurisdictions participating in the NAISMA WFP Program may wish to add the NAISMA standards to their regulations. Incorporating the NAISMA standards by reference promotes uniformity and standardizes the certification process across jurisdictions and ensures certified products meet the NAISMA baseline requirements. Incorporation by reference also reduces the need for agencies to revise regulatory text every time the NAISMA standards are updated, although regulatory amendments would be needed if the URL changes or a new version of the NAISMA standards is released. The full webpage URL is provided to ensure a reader of the regulation can navigate to the original source. This section provides model language to incorporate the NAISMA program standards for all four product categories: forage, gravel, mulch, and compost. Jurisdictions offering certification for fewer product categories need only incorporate the relevant standards. This section also authorizes inspectors to issue transit certificates upon request.

VII. TREATMENT PROCEDURES TO REDUCE THE RISK OF DISSEMINATION OF INVASIVE PLANTS

If during an inspection an invasive plant is found in the field or area where a product is produced or stored, the Approved Inspector shall make recommendations for treatment of the field or area to prevent invasive plant viability. The applicant may treat the invasive plants and request a follow-up inspection at additional cost to the applicant. If upon re-inspection, the Approved Inspector determines that the invasive plants were treated in a manner that will prevent their dissemination then a product can be certified.

Explanatory Note:

Rationale: NAISMA program standards permit the certification of products containing Appendix A species or parts if the area of origin has been treated to prevent seed viability or if the propagating parts of the plant are not capable of producing a new plant. Allowing certification of products from treated sites achieves WFP programs' goal of preventing the spread of invasive plants.

Application: This section incorporates the NAISMA exception into the regulatory framework and requires inspectors to provide guidance as to acceptable treatment methods.

VIII. REASONABLE FEES FOR OBTAINING CERTIFICATION

The Department may charge reasonable fees for obtaining certification. These fees may differ depending on type of product, field acreage, product volume, or other relevant factors such as costs of marking and identification. The fee schedule will be updated and published annually on the Department's website at [insert link].

Explanatory Note:

Rationale: *The Model Weed Free Products Act authorizes the designated agency to “Establish and assess fees to support the cost of administering the weed free products program.” Including certification fees in the regulations is an effective way to ensure applicants are aware of program compliance costs upfront.*

Application: *To provide maximum flexibility, the model regulations provide a list of factors that the agency could consider in setting a reasonable fee schedule but does not include a set schedule in the regulations. Some jurisdictions may want to be more specific about the fee schedule or range of prices in their regulations.*

IX. VIOLATIONS

- A. It shall be a violation of these rules for an individual participating in the Weed Free Products Program to:
 - i. Refuse or fail to comply with any provisions of the [Model Weed Free Products Act];
 - ii. Make false, misleading, deceptive, or fraudulent representations regarding certification;
 - iii. Fail to maintain or submit documents required by these rules;
 - iv. Refuse to pay a fee for inspection services provided;
 - v. Alter or deface in any manner any certificate; or
 - vi. Reproduce or produce a facsimile of any certificate or certificate marking pertaining to certification of any product.

Explanatory Note:

Rationale: While a producer's participation in a WFP program is voluntary, violations of rules, processes, and standards must be addressed to protect program integrity. Fraudulent behavior undermines the effectiveness of and consumer trust in certification programs. Producers should be held accountable for dishonesty or misuse of the certification system. Including a list of prohibited acts provides fair warning of prohibited conduct and legal authority for enforcement.

Application: This section provides examples of conduct that can threaten the integrity of a WFP program that a jurisdiction may wish to prohibit by law. This includes fraudulent behavior such as false marketing or counterfeiting inspection or transit certificates, as well as failure to maintain records or pay fees.

X. ENFORCEMENT

- A. Investigations of suspected violations of the standards set forth in this chapter may be conducted by the Department or its agents.
- B. Whenever the Department has reason to believe that a violation has occurred, it may initiate an enforcement action as authorized by [the Model Weed Free Products Act].
- C. Where a violation has occurred, the Department may:
 - i. Permit the sale of the non-compliant product if all certification markings are removed; or
 - ii. Prohibit an individual from participating in the weed free products certification program for a period of up to two (2) years.

Explanatory Note:

Rationale: Enforcement mechanisms are necessary to address violations. If a producer is caught violating the provisions of the WFP program, they should face consequences to discourage similar behavior in the future. The Model Weed Free Products Act authorizes several enforcement actions to address violations including civil and criminal penalties, cancellation of certificates, and stop sale orders.

Application: This section authorizes the Department or its agents to conduct investigations into potential violations of WFP program rules or standards. In addition to the enforcement mechanisms provided for in the Model Weed Free Products Act, this section clarifies that the Department may permit the sale of a product that does not comply with WFP program standards if all program certification markings are removed. Further, this section allows the jurisdiction to prohibit a producer from participating in the WFP program for a designated time period as an additional enforcement tool.

APPENDIX A

MODEL WEED FREE PRODUCTS ACT

I. PURPOSE

It is the policy of the legislature that residents of the [state/province] 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/province] and other states and countries 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.

II. DEFINITIONS

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

“**Certification marking**” means twine, wire, tag, label, mark, or emblem affixed 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.

III. ESTABLISHMENT OF WEED FREE PRODUCTS PROGRAM

- A. The Director [of designated Department] 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/province] and to allow businesses 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/province 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 approved 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.

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 approved 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/province] or its political subdivisions, other [states/provinces], federal agencies, universities, nonprofit organizations, or other parties to carry out the weed free products program.

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 markings 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/province] and shall act in an official capacity for the [state/province] and under the supervision of the Director consistent with this chapter.

VII. PROHIBITED ACTS

It is unlawful for a person to certify or sell as certified any product as weed free within this [state/province], 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.

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/province] and its agencies must be certified weed free.
 - B. All applicable products used by public utilities and local, county, or [state/province] agencies, including but not limited to forage, mulch, gravel, and compost, must be certified as weed free.
-

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.

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.

APPENDIX B

MODEL IMPLEMENTING REGULATIONS FOR THE MODEL WEED FREE PRODUCTS ACT

I. PURPOSE

The Weed Free Products Program is a voluntary program managed by [the designated state/province Department] authorized by [the Model Weed Free Products Act]. The purpose of the Weed Free Products Program is to encourage the production of forage, gravel, mulch, compost, and other materials free of invasive plants to reduce the spread of such species and meet consumer demand for weed free products. These regulations set forth the program standards and protocols for the preparation of inspection and transit certificates to facilitate the marketing, sale, and interjurisdictional transport of weed free products.

II. DEFINITIONS

The following words and terms, when used in this [Chapter, Subchapter, Part], shall have the following meaning

- A. “**Approved Inspector**” means an individual who has been accredited by the Department or by the Department’s agent in accordance with NAISMA training standards to conduct weed free product inspections.
- B. “**Compost**” means a product that is manufactured through the controlled aerobic, biological decomposition of biodegradable materials. The product has undergone mesophilic and thermophilic temperatures, which significantly reduces the viability of pathogens and weed seeds (in accordance with EPA 40 CFR 503 standards) and stabilizes the carbon such that it is beneficial to plant growth.
- C. “**Department**” means [the designated state/province Department].
- D. “**Forage**” means any crop, including alfalfa, grass, small grains, straw, and similar crops and commodities, that is grown, harvested, and sold for livestock forage, bedding material, or mulch related uses and the byproducts of those crops or commodities that have been processed into pellets, cubes, or related products.
- E. “**Gravel**” means small stones or pebbles, or a mixture of these with sand, stone, and gravel as well as recycled concrete and asphalt materials.
- F. “**Inspection certificate**” means a form completed by an Approved Inspector indicating that an eligible product is weed free in accordance with weed free product standards as set forth in this chapter.

- G. “Mulch” means any material or mix of materials that consists of a combination of vegetation, and/or synthetic products that is manufactured as a whole, or has each of its component parts source certified according to the NAISMA standard, to ensure the material is not a source of weed seeds or live vegetative propagules, and that is used for temperature, moisture, and/or erosion control, weed suppression, or aesthetic purposes, and is applied solely as a surface treatment.
 - H. “NAISMA” means the North American Invasive Species Management Association.
 - I. “Transit certificate” means a form completed by an Approved Inspector indicating that an eligible product in transit is weed free in accordance with weed free product standards as set forth in this chapter.
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III. DESIGNATION OF PROHIBITED INVASIVE PLANTS.

- A. The Department pursuant to [relevant statutory authority] hereby declares the following species as an invasive plant.
 - i. [list of species.]
 - B. The Department shall prepare, publish, and revise as necessary the list of invasive plants. The list must be distributed to the public by the Department through publication on the agency’s website and other reasonable means.
-

IV. CERTIFICATION PROGRAM

- A. The Department is the certifying authority for weed free products in the jurisdiction.
- B. The Department designates [entity] to serve as an agent for the purpose of implementing this program.
- C. The Department or its agents will:
 - i. Coordinate weed free products inspections within the [state/province].
 - ii. Select, train, and supervise persons who serve as Approved Inspectors.
 - iii. Issue inspection certificates, transit certificates, and certification markings.
 - iv. Maintain a record of inspections performed and certificates issued.

V. DESIGNATION OF INSPECTORS

- A. Only Approved Inspectors may certify products as being weed free.
- B. Each person seeking designation as an Approved Inspector must meet minimum training and accreditation standards as established by the Department or its agent.
- C. Approved Inspectors must:
 - i. Successfully complete and maintain an active certification for the NAISMA Certified Weed Free Products Inspector Certification Course;
 - ii. Attend a training provided annually by the Department or its agent that will include, but not be limited to, the following topics:
 - 1. [State/Province] invasive plant laws and regulations;
 - 2. Department invasive plant lists;
 - 3. Department inspection and certification standards and guidelines;
 - 4. [State/Province]-approved invasive plant management and control techniques.

VI. INSPECTION PROCEDURES

- A. A producer of products who wishes to have products certified as weed free must submit an inspection request form. Upon receipt of the inspection request form and verification of applicant eligibility, the Department or its agent will arrange for an inspector.
- B. Inspectors are to follow NAISMA standards, which are hereby incorporated by reference. The following documents are incorporated by reference:
 - i. The NAISMA Certified Weed Free Forage Minimum Standards, Appendix E: Field Inspection Standards and Minimum Guidelines for Field Inspections, as published at <https://drive.google.com/file/d/1kVLu5ZKmqQaZRZ4qO4RF4sye1ZB3Ud4aB/view>
 - ii. The NAISMA Certified Weed Free Products Gravel Minimum Standards, Appendix C: Minimum Guidelines for Active Material Pit Inspections, as published at <https://drive.google.com/file/d/1WmRPBt2Ftrdo9sDpWtlkxLoJdWRCMCiq/view>
 - iii. The NAISMA Certified Weed Free Products Mulch Minimum Standards, Appendix D: Standards and Minimum Guidelines for Field Inspections, as published at <https://drive.google.com/file/d/1boqPzVyC3Itc2ru7hnxGPbKjuebxmXyy/view>

- iv. The NAISMA Certification Weed Free Products Compost Minimum Standards, Appendix D: Standards and Minimum Guidelines for Field Inspections, as published at https://drive.google.com/file/d/16bhRaMFzuK7aUaN7_0eOK_LVl6nsE1iG/view
- C. After completing an inspection, the Approved Inspector will complete an inspection certificate and deliver a paper or electronic copy of the form to the applicant.
- D. A transit certificate may be completed by an Approved Inspector at the time of inspection at the request of an applicant intending to ship certified products out of [state/province].

VII. TREATMENT PROCEDURES TO REDUCE THE RISK OF DISSEMINATION OF INVASIVE PLANTS

If during an inspection an invasive plant is found in the field or area where a product is produced or stored, the Approved Inspector shall make recommendations for treatment of the field or area to prevent invasive plant viability. The applicant may treat the invasive plants and request a follow-up inspection at additional cost to the applicant. If upon re-inspection, the Approved Inspector determines that the invasive plants were treated in a manner that will prevent their dissemination then a product can be certified.

VIII. REASONABLE FEES FOR OBTAINING CERTIFICATION

The Department may charge reasonable fees for obtaining certification. These fees may differ depending on type of product, field acreage, product volume, or other relevant factors such as costs of marking and identification. The fee schedule will be updated and published annually on the Department's website at [insert link].

IX. VIOLATIONS

- A. It shall be a violation of these rules for an individual participating in the Weed Free Products Program to:
 - i. Refuse or fail to comply with any provisions of the [Model Weed Free Products Act];
 - ii. Make false, misleading, deceptive, or fraudulent representations regarding certification;
 - iii. Fail to maintain or submit documents required by these rules;
 - iv. Refuse to pay a fee for inspection services provided;
 - v. Alter or deface in any manner any certificate; or
 - vi. Reproduce or produce a facsimile of any certificate or certificate marking pertaining to certification of any product.

X. ENFORCEMENT

- A. Investigations of suspected violations of the standards set forth in this chapter may be conducted by the Department or its agents.
- B. Whenever the Department has reason to believe that a violation has occurred, it may initiate an enforcement action as authorized by [the Model Weed Free Products Act].
- C. Where a violation has occurred, the Department may:
 - i. Permit the sale of the non-compliant product if all certification markings are removed; or
 - ii. Prohibit an individual from participating in the weed free products certification program for a period of up to two (2) years.