

**Colorado Guidance for Issuing Permits
to Exempt Use of
Certified Weed Free Hay, Straw or Mulch on BLM Lands**

The following Colorado Rule was published in the *Federal Register* on July 24, 1996:

Supplementary Rules to Require the Use of Certified Noxious Weed-Free Forage on Bureau of Land Management-Administered Lands in Colorado

(a)(1) To prevent the spread of weeds on BLM-administered lands in Colorado, effective August 1, 1996, all BLM lands within the state of Colorado, at all times of the year, shall be closed to possessing or storing hay, straw, or mulch that has not been certified as free of prohibited noxious weed seed.

(2) Certification will comply with "Regional Standards" jointly developed by the states of Colorado, Idaho, Montana, Utah, Wyoming, and Nebraska for noxious weed seed free and noxious weed free forage.

(3) The following persons are exempt from this order: anyone with a permit signed by BLM's authorized officer at the Resource Area Office specifically authorizing the use of noncertified hay, straw or mulch within that Resource Area.

(b) Any person who knowingly and willfully violates the provisions of these supplemental rules regarding the use of noncertified noxious weed-free hay, straw, or mulch when visiting Bureau of Land Management administered lands in Colorado, without authorization required, may be commanded to appear before a designated United States Magistrate and may be subject to a fine of not more than \$1,000 or imprisonment of not more than 12 months, or both, as defined in 43 United States Code § 1733(a).

First year of the Supplementary Rule

The first year of implementation is intended to be a year in which the focus is on informing the public of the new regulation. A focus on education and awareness does not preclude action by law enforcement but issuing tickets should be limited to flagrant, repeated violations.

Purpose of this Supplementary Rule

The purpose of this rule is to prevent the spread of weeds on BLM lands in Colorado. Region Two of the United States Forest Service implemented this same requirement in 1994. Implementing this regulation on BLM lands in Colorado offers a chance to require consistent management across jurisdictional boundaries, and simplifies requirements for public land users.

The use of certified weed free forage is just one of many preventative weed management measures being implemented on BLM lands. In January 1996 BLM published *Partners Against Weeds, An Action Plan for the Bureau of Land Management (PAW Plan)* which focuses on stopping the spread of weeds to lands that are not currently infested. The introductory section of the PAW Plan includes a section that states, *requirements for using weed-seed free forage and feeds can be put into effect on public lands. These requirements should be applied consistently to all uses of public lands, including casual recreational use and authorized grazing use.*

Preventing weed seed spread is one of the best management practices listed in Appendix 4 of the PAW Plan. Prevention of large weed infestations is the most cost effective part of integrated weed management.

Colorado BLM Role in the State Certification Program

Each State that participates in the Regional Forage Certification Program administers the program within that State. Legislation authoring the Colorado Department of Agriculture to create a weed free certification program was adopted by the Colorado General Assembly in 1993 (Title 35, Article 27.5).

The purpose of the Weed Free Forage Crop Certification Program is to inspect forage or mulch before it is harvested to verify that there are no propagative plant parts of noxious weeds present within the crop. All requests for certification of hay, straw or mulch must be directed to the Colorado Department of Agriculture.

The use of weed free forage or mulch is intended to reduce the spread of weeds on public lands and other areas where forage or mulch are used. BLM's role is to protect our natural resources by preventing the introduction and continuing spread of noxious weeds on the lands we manage.

Permits for Exemptions Must be in Writing

All authorizations for use of non certified hay must be in writing. A permit holder must have a completed format (See attached example) with original signatures if a BLM law enforcement officer asks to see the permit when noncertified hay is found on BLM administered lands in Colorado.

A copy of an exemption permit with original signatures should be given to the applicant when the exemption is granted. A copy should be kept on file in the office.

Use of Pelletized Feed

The final federal register notice requires the use of certified weed free products or other approved products such as processed grains or pellets. **Use of certified weed free hay, straw and mulch is preferred over the use of other products such as processed grains or pellets.** Processing can kill most weed seeds and other propagative parts, but hay and grain pellets can contain viable seeds. Studies by D. L. Zamora and J. P. Olivarez which are in publication at this time document the presence of weed seeds in pelletized hay and grains. Currently there are no standards for processing and no guarantee that the process used has killed all weed seeds present. Hay is certified before it is cut, so it is known to be free of weed seeds and propagative parts and is the preferred product for use on BLM lands in Colorado. Requiring the use of pellets is better than allowing the use of non certified weed free hay, but pellets should not be considered completely free of weeds unless certified weed free hay was used to make the pellets.

Issuing Permits when Hay is Unavailable

Since the Forest Service in Region Two enacted this same policy for National Forest lands, permits have only been issued when hay was not available in the area. Two permits were issued to livestock operators when no hay was available. Permits were given to hunters requesting the exemption during, but the number of permits issued has dropped off dramatically since the first year of the program.

If hay is unavailable (no growers or retailer outlets) within a 100 mile radius of the area where it is to be fed, then area managers may issue an exemption permit.

To improve customer service, each Resource Area should create and maintain a list of retail outlets within the Resource Area that sell certified weed free products. Lists of Growers of Certified products are available from the Colorado Department of Agriculture.

Issuing Permits for Supplemental Feeding (hay only) for Livestock

Existing BLM regulations Sec 4140.1(3) prohibit placing supplemental feed on BLM administer lands without authorization. Hay is considered a supplemental feed. According to current BLM Manual (H-4130-1), the authorized officer may include terms and conditions in permits or leases to direct the placement of supplemental feed on public lands by the permittee or lessee.

Every effort should be made to implement the alternative of placing noncertified hay on private lands before authorization on public lands is issued.

In any situation where we plan to authorize the use of hay as a supplemental feed in an existing permit, the hay used must be certified weed free hay. This includes feeding livestock to achieve a range management goal such as brush beating to reduce sagebrush cover.

Issuing Permits for Emergency Livestock Feeding

The H4130-1 manual also addresses emergency feeding which may be required as a result of an unforeseen event which limits the forage availability for livestock. Examples are feeding of hay as a result of fire, flood or snow. Feeding is accepted on the public lands for a short period of time while the emergency exists or until the livestock can be removed. When emergency feeding occurs on public lands, the authorized officer must evaluate the circumstances to determine if the permits or leases should be suspended in whole or in part, or if action is needed to close the allotment to livestock grazing.

Permits to authorize feeding of noncertified hay may not exceed the length of time livestock are authorized in that pasture during current grazing season.

Issuing Permits for Other Emergency Feeding

During very long and severe winters, or in other emergency situations, the Colorado Division of Wildlife (DOW) may ask for permission to feed game herds on BLM administered lands. Current DOW policy requires the use of pelletized feeds or weed free hay. If an emergency exists and certified weed free hay is not available, an Area Manager may issue an authorization permit for the use of noncertified weed free hay, until the emergency ends.

In managing wild horse herds in Colorado, it may occasionally be necessary under emergency situations to feed wild horses. If certified weed free hay is not available, an Area Manager may, after completion of National Environmental Policy Act (NEPA) analysis, purchase and feed noncertified weed free hay to wild horses for short periods of time.

Use of Certified Weed Free Hay, Straw and Mulch

In any situation where we require the use of hay straw or mulch on a permit in a reclamation situation, the hay straw or mulch must be certified weed free. In the case of BLM projects it will be our policy to plan for purchasing and acquiring certified weed free products during project development.

Area Managers may issue permits for authorizing the use on noncertified straw or mulch in the event of an emergency if certified straw or mulch is not available.

National Environmental Policy Act (NEPA) Documentation

The NEPA documentation is complete for the use of certified weed free hay only. Issuing an authorization to permit use of noncertified hay is subject to NEPA compliance. An Environmental Assessment (EA) should address the mitigation measures, monitoring and other actions that will take place as a result of authorizing an action that will potentially spread weeds. It can be tiered to the Statewide EA (CO-930-96-001) for requiring the use of weed free hay and any local weed management area plan environmental documentation that may exist. The suggested permit authorization format developed as part of this guidance contains a requirement for a unique EA number.

Each Area Manager should consider completing a Resource Area wide Programatic EA to cover instances of emergency feeding in a timely manner. After a Programatic EA is in place, the Area Manager may issue administrative determinations that tier to the programatic, but have unique numbers.

Standard Stipulations in the Permit

Permit holder agrees to place a specified amount of hay on a specified location for specified amount of time.

Permit holder removes all baleing wire and twine from site .

Permit Format

Any Permit format used by the Resource Area must contain the following information:

- Asking for authorization must be in writing.
- All responsible parties must sign application
- Why exemption is needed
- Why permittees private lands are unsuitable for hay feeding
- Exact location where feeding will occur (include map)
- Source of the hay to be fed
- Quantity of hay to be fed
- Length of time feeding will occur
- Where permittee tried to purchase certified weed free hay
- Standard stipulations
- Other stipulations
- Authorization statement
- Authorizing officers signature and date
- Permit number

Each office should keep a log of all exemptions permits requested. The requests should be numbered by a two didget year code folowed by a state code, the administrative unit code, and the number such as 96-CO-038-001

EA number

Place the unique number in this space that was recored in the EA log where this action was evaluated for NEPA.

Current Standards for Colorado and Regional Certification of Hay, Straw and Mulch are attached. They are included in Rules and Regulations pertaining to the Weed Free Forage Crop Certification written by the Colorado Department of Agriculture.

A sample format is included in this guidance.

Permit to Exempt Use of Certified Weed Free Hay, Straw or Mulch

Permit Number _____

Environmental Assessment Number _____

By my signature below, I am requesting an exemption from the use of certified weed free hay straw or mulch , and I agree that by accepting this authorization to possess and feed/utilize non certified weed free hay, straw or mulch on public lands, I hereby assume full liability for control of weeds caused by my placing of non certified weed free hay , straw or mulch on public lands.

Applicant's Name: (please print) _____ Applicant's Signature _____ Date _____

Reason for Exemption Request (include reasons why private lands are unsuitable for feeding hay)

List of places where applicant has tried to purchase weed free hay, straw or mulch

Amount of hay to be fed _____

Source of uncertified hay straw or mulch	Exact Location where hay will be used (attach map)	Length of time feeding will occur
_____	_____	_____
state, county, grower	T. R. Section 1/4 1/4	month, day, year From To

Stipulations listed as mitigation in listed in the above EA number

I authorize the use of non certified hay, straw or mulch within the boundaries of my Resource Area at the location listed above and for the time period specified above.

BLM Authorized Officer's Signature _____ Date _____

RULES AND REGULATIONS PERTAINING TO THE WEED FREE FORAGE CROP
CERTIFICATION ACT

Statement of Basis and Purpose

These rules and regulations are adopted pursuant to the Weed Free Forage Crop Certification Act, § 35-27.5-103, C.R.S. (1993 Supp.).

The purpose of these rules and regulations is to adopt such rules and regulations necessary to carry out the provisions of the Act, including establishing definitions of pertinent terms, state and regional lists of weeds, procedures for certification of weed free forage crops and forage crop inspection, qualification standards for persons seeking designation as authorized inspectors or as qualified employees, delegations by the Commissioner of Agriculture pursuant to § 35-27.5-104 of the Act, procedures for identifying and tracking certified forage crops, and violations of the Act and rules and regulations thereto.

1.00 DEFINITION OF TERMS

a. "Weed free" means to be free from propagative plant parts and free from weed seed from plants set forth on the state or regional lists in Sections 1.01 and 1.02 below.

b. "Propagative plant parts" are any part of a plant capable of reproducing itself, including live roots, rhizomes, and/or stolons present in the forage to be harvested.

c. "Weed seed" includes the bud stage of broadleaf plants and the boot stage of grasses.

d. "Weeds" are those weeds set forth in the state and regional lists in Sections 1.01 and 1.02 below.

e. "Treated" means utilizing treatment methods to prevent weed seed formation including, but not limited to, burning, mowing, roguing, mechanical methods, or chemically treating.

f. "Forage" includes hay, straw or mulch.

g. "Department" is the Plant Industry Division, Colorado Department of Agriculture.

h. "Commissioner" is the Commissioner of Agriculture, State of Colorado.

i. "Producer" is the grower and/or seller of the forage.

1.01 COLORADO STATE WEED LIST

As to state list certification, there shall be two categories, known as Category I and Category II. There shall be no allowable tolerances of Category I weeds, except as provided in paragraphs 2.00(e)(1) and (2) below. Category II weeds which are specifically named must be noted by percent in field if present, but the presence of Category II weeds will not result in denial of certification. Category II weeds which are not specifically named may be noted by percent if a concern exists as to that weed's presence.

Category I

Bull thistle
Canada thistle
Dalmatian toadflax

Diffuse knapweed
Field bindweed
Hoary cress
Houndstongue
Leafy spurge
Musk thistle
Plumeless thistle
Purple loosestrife
Russian knapweed
Scotch thistle
Spotted knapweed
St. Johnswort
Tall whitetop
Yellow toadflax

Cirsium vulgare
Cirsium arvense
Linaria genistifolia
ssp dalmatica
Centaurea diffusa
Convolvulus arvensis
Cardaria draba
Cynoglossum officinale
Euphorbia esula
Carduus nutans
Carduus acanthoides
Lythrum salicaria
Acroptilon repens
Onopordum acanthium
Centaurea maculosa
Hypericum perforatum
Lepidium latifolium
Linaria vulgaris

Category II

Cheat
Common mullein
Downy brome
Field sandbur
Flixweed

Bromus secalinus
Verbascum thapsus
Bromus tectorum
Cenchrus incertus
Descurainia sophia

Halogeton
Longspine sandbur
Pinnate tansymustard
Puncture vine

Halogeton glomeratus
Cenchrus longspinus
Descurainia pinnata
Tribulus terrestris

Any other weed which is of concern by its presence

1.02 REGIONAL LIST

As to regional certification, the following list applies. The specific states designating such weed as noxious or undesirable are set forth next to each weed name. In any field to be regional list certified, there shall be no tolerance for any regional list weeds in a field to be certified for the particular state/region, except as provided in paragraphs 2.00(e) (1) and (2) below.

Absinth wormwood (*Artemisia absinthium*) Biennial wormwood
(*Artemisia biennis*) ND, WA
Bermudagrass (*Cynodon dactylon*) UT
Buffalobur (*Solanum rostratum*) ID, OR, WA
Canada thistle (*Cirsium arvense*) CO, ID, KS, MT, NE, NV, OR, SD,
UT, WA, WY
Common burdock (*Arctium minus*) WY
Common crupina (*Crupina vulgaris*) ID, MT, OR, WA
Common tansy (*Tanacetum vulgare*) WY
Dalmatian toadflax (*Linaria genistifolia ssp dalmatica*) CO, ID, MT,
NV, OR, WA, WY
Diffuse knapweed (*Centaurea diffusa*) CO, ID, MT, NV, OR, UT, WA, WY
Dyers woad (*Isatis tinctoria*) ID, MT, OR, UT, WA, WY
Field bindweed (*Convolvulus arvensis*) CO, KS, ND, MT, OR, SD, UT,
WA, WY
Hemp (marijuana) (*Cannabis sativa*) ND
Henbane, black (*Hyoscyamus niger*) ID
Hoary cress (*Cardaria draba*) CO, ID, KS, MT, ND, NV, OR, SD,
UT, WA, WY
Horsenettle (*Solanum carolinense*) SD, NV
Houndstongue (*Cynoglossum officinale*) CO, WA, WY
Johnsongrass (*Sorghum halepense*) ID, KS, NV, OR, UT, WA
Jointed goatgrass (*Aegilops cylindrica*) ID
Leafy spurge (*Euphorbia esula*) CO, ID, KS, MT, NE, ND, NV, OR, SD,
UT, WA, WY
Loosestrife (*Lythrum salicaria*) CO, ID, MT, OR, WA
Matgrass (*Nardus stricta*) ID, OR
Meadow knapweed (*Centaurea pratensis*) ID, OR, WA
Medusahead (*Taeniatherum caput-medusae*) NV, OR, UT

Miliun (*Milium vernale*) ID
 Musk thistle (*Carduus nutans*) CO, ID, KS, NE, ND, NV, OR, UT, WA,
 WY
 Orange hawkweed (*Hieracium aurantiacum*) ID, WA
 Ox-eye daisy (*Chrysanthemum*) WA, WY
 Perennial pepperweed (*Lepidium latifolium*) ID, ND, OR, SD, UT, WA,
 WY
 Perennial sowthistle (*Sonchus arvensis*) ID, ND, NV, SD, WA, WY
 Plumeless thistle (*Carduus acanthoides*) NE, WA, WY
 Poison hemlock (*Conium maculatum*) ID, NV, OR, WA
 Puncture vine (*Tribulus terrestris*) CO, ID, WA
 Quackgrass (*Elytrigia repens*) KS, OR, SD, UT, WA
 Rush skeletonweed (*Chondrilla juncea*) ID, MT, OR, WA
 Russian knapweed (*Acroptilon repens*) CO, ID, KS, MT, ND, NV, SD,
 UT, WA, WY
 Scotch broom (*Cytisus scoparius*) ID, WA
 Scotch thistle (*Onopordum acanthium*) CO, ID, NV, OR, UT, WA, WY
 Silverleaf nightshade (*Solanum elaeagnifolium*) ID, OR, WA
 Skeletonleaf bursage (*Ambrosia tomentosa*) ID, WA, WY
 Sorghum-almum (*Sorghum almum*) UT
 Spotted knapweed (*Centaurea maculosa*) CO, ID, MT, ND, OR, UT, WA,
 WY
 Squarrose knapweed (*Centaurea squarrosa*) OR, SD, UT
 St. Johnswort (*Hypericum perforatum*) CO, MT, NV, OR, WA
 Sulfur cinquefoil (*Potentilla recta*) MT
 Syrian bean caper (*Zygophyllum fabago*) ID, WA
 Tansy ragwort (*Senecio jacobaea*) ID, OR, WA
 Toothed spurge (*Euphorbia dentata*) ID
 Yellow hawkweed (*Hieracium pratense tause*) ID, WA
 Yellow starthistle (*Centaurea solstitialis*) ID, MT, NV, OR, SD, UT,
 WA
 Yellow toadflax (*Linaria vulgaris*) CO, ID, OR, WA, WY
 Wild proso millet (*Panicum miliaceum*) OR, WY
 Wild oats (*Avena fatua*) WY

2.00 PROCEDURES FOR CERTIFICATION OF WEED FREE CROPS

a. A request for certification of a forage crop shall be made to the Department. Said request may be made by phone or in writing. A request for certification must designate whether state list or regional list certification is desired.

b. An inspection request form shall be completed by the producer prior to inspection.

c. The Department shall arrange for an inspector.

d. The forage crop shall be inspected in the field(s) of origin. The field shall include the surrounding ditches, fence rows, roads, easements, rights of way, or buffer zones surrounding the field.

e. Forage which contains any weed(s) designated on the state list or the regional list, as appropriate, may be certified if the following requirements are met:

1. The field upon which the forage was produced has been treated to prevent seed formation prior to bud stage or boot stage to the degree that there is no danger of dissemination of the seed or any injurious portion thereof from such weeds; and

2. Live roots, rhizomes, or stolons of the weeds are not present in the forage to be harvested.

f. A certificate of inspection shall be completed for each field/lot. The certificate of inspection shall document whether the requirements stated in Section 2.00(e), immediately above, have been met based upon a reasonable and prudent visual inspection.

2.01 INSPECTION PROCEDURES

a. There shall be a minimum of two entry points per field.

b. There shall be a minimum of one entry point per each 10 acres.

c. Each point of entry shall be at least 150 feet into the field, and each additional 150 feet traveled shall constitute an entry point. Travel shall be uninterrupted, proceeding through the field being inspected.

d. The entire field border shall be walked or driven.

e. Fields shall be inspected within 10 days prior to harvest.

f. In a field to be state list certified, any state list Category II weeds found will be noted, and percentage of infestation of the field or forage with these weeds shall be noted in the comments section of the certification form.

g. An inspector may not inspect fields of which said inspector has ownership or financial interest.

2.02 PROCEDURES FOR TRACKING AND IDENTIFYING CERTIFIED FORAGE

a. The producer shall inform the inspector of the bale count and estimated total weight of the forage harvested from each inspected field.

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

c. If required by the purchaser or the producer, a transit document, whether the original or a photocopy thereof, shall accompany all inspected forage offered for sale or sold. The transit document shall contain the inspection certificate number, the producer's name, and the quantity purchased in number of bales and estimated weight. The purchaser of said forage shall complete the transit document and return it to the Department.

d. All inspected forage bales shall be identified by a marking system, whether colored twine or marked wire.

3.00 QUALIFICATION STANDARDS FOR PERSONS SEEKING DESIGNATION AS AUTHORIZED INSPECTORS OR QUALIFIED EMPLOYEES

Only qualified inspectors may certify forage as being weed free. Each person seeking designation as an authorized inspector or a qualified employee by the Commissioner shall first attend a seminar given by Colorado State University Cooperative Extension specifically designed to educate and train inspectors about the law, the principles associated with utilizing weed free forage, and the standardized procedures used during the inspection process. Proof of attendance at said seminar shall be submitted to the Commissioner along with a written request for designation as an authorized inspector or qualified employee.

4.00 DELEGATION OF THE COMMISSIONER'S POWERS

a. All authorized inspectors and qualified employees shall inspect forage in compliance with the provisions of these rules and regulations.

b. Forage inspections may be conducted by authorized inspectors or qualified employees.

c. Investigations of suspected violations of the Weed Free Forage Crop Certification Act or of these rules and regulations shall be conducted by Department employees only.

5.00 VIOLATIONS

It shall be a violation of these rules and regulations to:

a. Refuse or fail to comply with any provisions of the Weed Free Forage Crop Certification Act (the "Act");

b. Refuse or fail to comply with any rules and regulations adopted pursuant to the Act or with any lawful order issued by the Commissioner;

c. Make false or misleading representations or statements in any document required by the Act or these rules and regulations;

d. Fail to maintain or submit documents required by the Act or these rules and regulations;

e. Alter or deface in any manner any document or marking system produced as the result of a crop inspection pursuant to the Act or these rules and regulations;

f. Reproduce, produce a facsimile of, or utilize in any fashion any documentation or marking system pertaining to certification of any crop, except as provided by the Act and these rules and regulations;

g. Impersonate any state, county, city, or municipal official or inspector; and

h. Make false, misleading, deceptive, or fraudulent representations regarding certification of any crop.

6.00 FEES

The maximum the producer will be charged for inspections is as follows:

- a. Inspection time, including travel, at a rate not to exceed \$25.00 per hour;
- b. Mileage for the inspector's travel not to exceed \$0.26 per mile;
- c. Per diem expenses, if travel and the inspection cannot be reasonably accomplished within one day, not to exceed \$86.00 per day;
- d. A per inspection fee not to exceed \$100.00 plus an acreage fee not to exceed \$4.00 per acre.
- e. The actual cost of the twine or marked wire, including shipping and handling.

Revised April 30, 1995