

TITLE 25 - CHAPTER 10

RULES & REGULATIONS

CONCERNING THE CONTROL OF

NOXIOUS WEEDS

Amendment
May 1, 2000

- 001 Designation and Publication of Noxious Weeds.
- 002 Methods and Times to Control Noxious Weeds.
- 003 Control Authority Duties and Responsibilities.
- 004 Dissemination of Noxious Weeds Through Articles.
- 005 Procedure to Bring Weed Under or Remove from the County Control Program.
- 006 Department Review of Continuing Education Programs.
- 007 Administration.
- 008 Forms.
- 009 Publication Adopted.
- 010 Annotation.

001. Designation and Publication of Noxious Weeds. The following weeds are hereby officially designated and published as noxious: Canada thistle - *Cirsium arvense* (L.) Scop.; leafy spurge - *Euphorbia esula* L.; musk thistle - *Carduus nutans* L.; plumeless thistle - *Carduus acanthoides* L.; knapweed (spotted and diffuse) - *Centaurea* (*maculosa* Lam. and *diffusa* Lam.) and after January 1, 2001, Purple Loosestrife - *Lythrum salicaria* L. and *L. virgatum* (including any cultivars and hybrids). Noxious weed shall mean the plant, seed, or seedlings of such weeds.

002. Methods and Times to Control Noxious Weeds.

002.01. The noxious weed control period shall be when noxious weeds are actively growing.

002.02. The following methods of controlling noxious weeds are hereby approved and adopted by the director, so long as such methods are employed during the noxious weed control period, are performed at such frequency to prevent the spread of noxious weeds, and have the approval of or meet the control standards of the control authority.

002.02A. Mechanical methods. Mechanical noxious weed control methods include mowing, chopping, digging, shredding, and tillage.

002.02B. Crop management methods. Crop management weed control methods include crop rotation and crop competition.

002.02C. Herbicide methods. The use of herbicides to control noxious weeds under the guidelines set out in the publication known as *EC 2000-130-D, "Herbicide Use In Nebraska,"* published by the University of Nebraska, Cooperative Extension Service, Institute of Agriculture and Natural Resources, a copy of which is attached and incorporated herein by reference and is hereby adopted and promulgated and may be used. Herbicide usage in a manner different from that set out in the aforementioned publication is approved under the following conditions:

002.02C1. The herbicide used shall be one that is approved or registered by the United States Environmental Protection Agency and the Nebraska Department of Agriculture for use on the noxious weeds to be controlled;

002.02C2. The method of applying the herbicide shall be in conformity with the provisions of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended on the effective date of these regulations, and the federal regulations duly adopted thereunder, and shall be consistent with label directions; and

002.02C3. The rate of application of the herbicide shall not be in excess of that specified on the label and shall not be at a rate less than that supported by the efficacy data filed with the Environmental Protection Agency in conjunction with the registration of the herbicide.

002.02D. Biological methods. To be deemed acceptable, the use of livestock, predators, pathogens, and parasites as a method of controlling noxious weeds shall be as effective as the use of herbicides, as set forth in 002.02C and shall be approved by the control authority.

002.03. Any determination made as to the failure of any person to control the spread of noxious weeds on land owned or controlled by him or her including the issuance of individual notices pursuant to *Neb. Rev. Stat. §2-955*, shall be guided by consideration of the intent and purposes of the Noxious Weed Control Act and these regulations. These factors include, but are not limited to, the following:

002.03A. The potential for spread of the noxious weeds to other land;

002.03B. The potential adverse effect of the noxious weeds and the seeds thereof on commodities to be removed from the land; and

002.03C. The degree of infestation of the noxious weeds. While any noxious weed infestation whatsoever is unacceptable, excessive degrees of infestation necessitates the taking of immediate and definite action. Such action shall be initiated in cases where the quantity of noxious weeds present reasonably indicates that current control methods are not satisfactorily controlling the spread of noxious weeds and that more effective control methods are necessary. Consideration of this factor, as explained above, should not be construed to imply that less than excessive infestations need not be controlled.

003. Control Authority Duties and Responsibilities.

003.01. To substantively carry out its duties and responsibilities under the Act and these regulations, each control authority shall:

003.01A. Annually submit the following reports to the director on or before January 31 of each year:

003.01A1. A weed program personnel information report. Such report shall be in the form prescribed in 25 NAC 10-008.01.

003.01A2. A budget report. The report form shall be that prescribed by the Nebraska State Auditor's office. A sample of such form is set forth in 25 NAC 10-008.02. A control authority need only to file that portion of the budget report which relates to the county weed control program. Such report shall, however, include as a minimum standard those sections of the county annual fiscal report containing information of the current budgeted revenue and

expenditures as well as the previous year's revenues and expenditures.

003.01A3. Noxious weed control plan. Such report shall be in the form prescribed in 25 NAC 10-008.03 or as is amended by the director. Should the director amend the noxious weed control plan, such plan will supercede 25 NAC 10-008.03 and be distributed to the control authority by November 30 for use in the following year.

003.01A4. An infestation report. Such report shall be in the form prescribed in 25 NAC 10-008.04 and shall contain information relative to the amount and type of land infested with noxious weeds, and such other information as the director may prescribe.

003.01A5. An activity report. Such report shall be in the form prescribed in 25 NAC 10-008.05 and shall contain information relative to the overall county noxious weed control program.

003.01A6. Any other information deemed necessary by the control authority.

003.01B. Annually inspect all lands within its jurisdiction in order to determine whether the Noxious Weed Control Act and its regulations have been complied with. The control authority shall document the annual inspection through the use of county road maps, plat books, or other records that have been approved by the Nebraska Department of Agriculture. All noxious weed infestations found during the annual inspection shall be additionally documented with an inspection report containing the information specified in 25 NAC 10-003.01C1. When the control authority determines that the noxious weeds have not been controlled, the control authority shall cause additional inspections to be made at least once during the noxious weed control period specified in 25 NAC 10-002 above until such time as the noxious weeds on said land have been controlled. Prior to the issuance of an individual notice, the control authority shall inspect such lands.

003.01C. Execute an inspection report in conjunction with the performance of any inspection of land found to be infested with noxious weeds.

003.01C1. The inspection report shall contain the following:

003.01C1A. The location of the land, including county, township, range, and section.

003.01C1B. The date of the inspection.

003.01C1C. The purpose of the inspection, whether it be annual, preliminary to the issuance of an individual notice, or otherwise.

003.01C1D. If noxious weeds are present, the names thereof, or, if none are present, a statement to that effect.

003.01C1E. The signature of the person conducting the inspection.

003.01C1F. The name of the landowner and, if applicable, the tenant, if known or capable of being determined.

003.01C1G. Number of acres inspected.

003.01C1H. Number of acres infested.

003.01C1I. Degree of infestation using the severity guidelines adopted in 25 NAC 10-008.06.

003.01C1J. Current land use.

003.01C1K. Any other information deemed appropriate by the control authority.

003.01C2. Whenever noxious weeds are found to be in growing crops, the control authority may, in addition to the inspection report, issue a crop inspection report as prescribed in 25 NAC 10-008.08. The crop inspection report may be used to prevent the movement or sale of growing crops when the harvest of such crops may result in hay, straw, seed, or grain becoming contaminated with viable noxious weed seeds or other noxious weed plant material capable of reproducing.

003.01C3. The control authority shall maintain files of inspection reports for a period of at least three (3) years following the date of inspection. Samples of acceptable inspection forms are contained in 25 NAC 10-008.06.

003.01D. Publish a general notice on or before May 1 and between August 1 and October 1 of each year as provided in section 2-955 of the Noxious Weed Control Act. Such general notice shall follow, as a minimum standard, the form prescribed in 25 NAC 10-008.07. Published size of the general notice shall be at least four inches by six inches or be at least 24 square inches in size. Copies of such notices shall be made available to the director for inspection and review within fifteen (15) days following the date of publication.

003.01E. Cooperate with other control authorities in carrying out its duties and responsibilities and in exercising its authority pursuant to the Noxious Weed Control Act and regulations adopted and promulgated under such act.

003.01F. Prepare a report indicating the disposition of each individual notice issued by the control authority. Such reports shall be in the form prescribed in 25 NAC 10-008.10 or contain the same information as is specified in this prescribed form.

003.01G. Employ a county weed superintendent who is certified by the Federal Environmental Protection Agency as a commercial applicator under the Federal Insecticide, Fungicide, Rodenticide Act in at least the following categories:

003.01G1. Agricultural pest control-plant, and

003.01G2. Right-of-way pest control.

003.01H. Make available all books, papers, files, records, and reports pertaining to noxious weeds to the director for inspection and review.

003.01I. Continually update all information filed with the Department as changes, additions, or deletions are made.

004. Dissemination of Noxious Weeds Through Articles.

004.01. All noxious weeds as designated in 25 NAC 10-001 are hereby found by the director to be noxious weeds which may be disseminated through articles. The following articles are hereby designated and published by the director as capable of disseminating noxious weeds:

004.01A. Machinery and equipment;

004.01B. Trucks;

004.01C. Grain and seed;

004.01D. Hay, straw, and other material of a similar nature;

004.01E. Nursery stock;

004.01F. Fence posts, fencing, or railroad ties;

004.01G. Sod;

004.01H. Manure;

004.01I. Soil;

004.01J. Any other articles determined by the director to have characteristics rendering it capable of disseminating noxious weeds.

004.02. The director hereby prescribes the following treatment for articles capable of disseminating noxious weeds, when such articles are suspected to have noxious weeds present:

004.02A. Machinery and equipment used in the harvesting of crops shall be treated as follows:

004.02A1. Remove all loose material from the top and sides of the machine and all other places of lodgement by sweeping or the use of forced air or forced water;

004.02A2. Remove all noxious weeds from shakers, sieves, and other places of lodgement;

004.02A3. Run the machine empty for at least five (5) minutes, alternately increasing and decreasing the speed;

004.02A4. Follow the manufacturer's detailed instructions for cleaning the machine; and

004.02A5. Whenever possible, aforementioned treatments shall be performed while the article is still on the land on which it became infested. If treatment cannot be performed at this location, the location selected shall be such as to minimize the possible dissemination of noxious weeds.

004.02B. Machinery and equipment other than that used for harvesting of crops including, but not limited to, trucks, tractors,

mowers, planters, and other articles, such as railroad ties, fence posts and fencing, shall be treated by brushing, sweeping, forced air, forced water, physical removal of noxious weeds or any other method deemed by the control authority to be consistent with the intent and purpose of the Noxious Weed Control Act and this regulation. With respect to the location where treatment is to be performed, the same guidelines as set out in 004.02A5, above, shall apply.

004.02C. Grain and seed suspected to contain noxious weeds may be transported prior to treatment if done in such a fashion as to prevent the dissemination of noxious weeds such as in enclosed trucks, but shall not be sold or transferred to another person prior to treatment. Grain and seed suspected to contain noxious weeds shall be treated by use of a seed cleaner which is effective in removing the noxious weeds from the grain and seed. Screenings remaining following treatment may not be used for feed, or for any other purpose which could result in the dissemination of noxious weeds.

004.02D. Soil, sod, nursery stock, hay, straw, and other material of a similar nature are articles for which no known acceptable method of treatment exists. Such articles may not be moved from the location at which they initially become infested, but may be utilized at that location for their commonly recognized purpose.

004.02E. Manure is an article for which no known acceptable method of treatment exists. Manure may not be moved from the location at which it initially became infested, but may be utilized at that location for its commonly recognized purposes.

004.02F. Should a method of treatment be developed for such articles listed in 004.01 through 004.01J, the control authority may allow its utilization if it is found by the director to be consistent with the intent and purposes of the Noxious Weed Control Act and these regulations.

004.03. The control authority shall make inspection services available to those who request the inspection of articles capable of disseminating noxious weeds. When the control authority is unable to provide requested inspection services, or when information is all that is needed, the control authority shall make every effort to advise persons within the county as to the proper treatment of articles capable of disseminating noxious weeds. A sample article inspection form is set out in 25 NAC 10-008.09.

005. Procedure to Bring Weed Under or Remove from the County Control Program.

005.01. Petition to bring weed under county program. Petitions filed with the director under and by virtue of the provisions of sections 2-954(1)(a) of the Noxious Weed Control Act shall be in the form prescribed in 25 NAC 10-008.11. Such petitions shall, in addition to the requirements of the provisions of the Noxious Weed Control Act, contain the following:

005.01A. An affirmation by the control authority that adequate resources, including funds, personnel, and equipment are available to control the spread of the petitioned weed.

005.01B. An affirmation by the control authority that the testimony and evidence presented at a public hearing on the petition generally supported the control authority's belief that special weed control problems exist within the county with respect to the petitioned weed.

005.01C. An affirmation by the control authority that the spread of the weed petitioned for can be controlled through utilization of the resources of the control authority.

005.01D. A statement of agreement or specified disagreement by the weed control superintendent of that county with respect to the affirmations of the control authority contained in the petition.

005.02. Removal of petitioned weed from county control program.

005.02A. The control authority may petition the director to remove a previously petitioned weed from the county's control program by submitting a petition in the form prescribed in 25 NAC 10-008.12.

005.02B. The director may remove a petitioned weed from the county control program by notifying the control authority of such in writing. Such removal may only occur upon a determination by the director that such weed is not being controlled by the county's weed control program, or no longer poses a serious or special problem in the county. Such notice shall provide the county an opportunity for a hearing before the director prior to the removal of the weed from the county control program.

006. Department Review of Continuing Education Programs.

006.01. The director shall review and approve all continuing education programs sponsored by any statewide association of county weed control superintendents or statewide associations of local governments responsible for weed control that the Noxious Weed Control Act requires county weed control superintendents to complete.

006.01A. A description of any continuing education program shall be submitted by the sponsoring association to the director at least three weeks prior to the first scheduled day of the continuing education program.

006.01B. Any continuing education program shall include the following:

006.01B1. A full attendance requirement with at least two roll calls for each eight hours of education.

006.01B2. Examinations which adequately test the participants' comprehension and understanding of the educational material presented in the program.

006.01B3. Passing scores of at least 70 percent on the examinations; and

006.01B4. Adequate procedures for documenting the attendance records, examinations, and examination scores.

006.01C. Within three weeks after the last scheduled day of a continuing education program, the sponsoring association shall provide the director documentation to show the continuing education program was carried out according to the description the association submitted to the director. Such documentation shall include:

006.01C1. Attendance records of all weed superintendents.

006.01C2. Copies of the examinations actually given during the program.

006.01C3. A listing of weed superintendents who have received passing scores for the program; and

006.01C4. Evidence that superintendents who did not fully attend the program and who did not receive a passing score for the program were not credited by the association as having completed the program.

007. Administration. These regulations shall be administered by the Department of Agriculture's Bureau of Plant Industry, located in the State Office Building, Fourth Floor, 301 Centennial Mall South, Lincoln, Nebraska. The mailing address is P.O. Box 94756, Lincoln, Nebraska 68509-4756. The telephone number is (402) 471-2394.

008. Forms.

008.01. Personnel Report.

008.02. State Budget Form.

008.03. Control Plan.

008.04. Infestation Report.

008.05. Activity Report.

008.06A. Inspection Report.

008.06B. Inspection Report.

008.07. General Notice.

008.08. Crop Inspection Report.

008.09. Article Inspection Form.

008.10. Individual Notice Disposition Report.

008.11. Petition to Designate a Weed Noxious in a County.

008.12. Petition to Remove Weed from County Control Program.

009. Publication Adopted. See Appendix A.

010. Annotation. Neb. Rev. Stat. §§2-945.01 through 2-966. (Reissue 1997).