

**MONTANA DEPARTMENT OF AGRICULTURE
AGRICULTURAL SCIENCES DIVISION
HELENA, MONTANA**

ADMINISTRATIVE RULES OF MONTANA

**CHAPTER 5
SUBCHAPTER 3**

NOXIOUS WEED SEED FREE FORAGE RULES

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NOXIOUS WEED SEED FREE FORAGE

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AGRICULTURAL SCIENCES DIVISION

Subchapter 3 Noxious Weed Seed Free Forage

4.5.301 PURPOSE AND SCOPE (1) The 1995 Montana legislature, upon finding that the movement of agricultural crops containing noxious weed seeds, as livestock forage, bedding, mulch, pellets, cubes, grain concentrates and related material was causing new and expanding noxious weed infestations, authorized and directed the Montana Department of Agriculture to implement the Noxious Weed Seed Free Forage Act and to adopt all necessary rules for the exercise of its power under that act.

4.5.302 DEFINITION OF TERMS These definitions apply to all rules adopted under the Montana Noxious Weed Seed Free Forage Act, Title 80, chapter 7, part 9, MCA:

(1) "Agent" means a person who is authorized or employed by the department and is certified by the department to conduct activities under the Montana Noxious Weed Seed Free Forage Act.

(2) "Board" means a district weed board created under 7-22-2103, MCA.

(3) "Cubes and other processed forage products (physical form)" means forage harvested from a certified field that is compacted into large pellets.

(4) "Field unit" means the part of a field that may be certified or which has been certified.

(5) "Grain Concentrate" means a grain product which includes but is not limited to whole grains, intended for livestock consumption that has been cleaned of noxious weed seeds by an approved process, inspected by an agent, and identified under a department-approved process as "Montana NWSFF certified."

(6) "Montana certified forage" means forage products from fields that meet Montana's forage certification standards and are approved by an agent; or grain concentrates, processed pellets, cubes and other forage products that meet the requirements of ARM 4.5.306 (2) through (8).

(7) "Pellets and other processed forage products (physical form)" means agglomerated feed formed by compacting and forcing through die openings by a mechanical process. If temperature is not used in the process, the forage must be from a certified field.

(8) "Restricted area" means an area designated by an agency, group or person that requires the use of noxious weed seed free forage.

4.5.303 NOXIOUS WEEDS (1) The Montana noxious weed seed free forage (NWSFF) certification program includes the noxious weeds set forth in ARM 4.5.202, 4.5.203 and 4.5.204, authorized by 7-22-2101(7)(a)(i), MCA.

(2) The regional forage certification program includes additional noxious weeds that have been so designated by other states and provinces. The department may

enter into agreements with other states and/or provinces which will allow forage to be certified on a regional basis.

4.5.304 APPLICATION FOR MONTANA CERTIFICATION OF NOXIOUS WEED

SEED FREE FORAGE (1) A person shall make application for NWSFF certification of a forage crop annually. The application shall be made with the department agent in the county in which the person resides or in the county in which the person owns or leases land on which forage will be produced. This request for application may be made by telephone, fax, in person or in writing.

(2) The agent is responsible for completing the top of the inspection form (or the agent may allow the producer to complete) with the following applicant information:

- (a) date annual application received;
 - (b) producer name and address, including zip code;
 - (c) producer telephone and, if available, their fax number;
 - (d) producer identification number;
 - (i) the producer identification number shall include the following, in the order stated, state, county, producer number and year forage harvested;
 - (e) estimate of acres to be inspected;
 - (f) general description of the field and/or legal description.
- (3) An application fee is not required.

4.5.305 STANDARD RANGE OF TOLERANCES FOR NOXIOUS WEED

SEEDS (1) The tolerance for noxious weed seeds in noxious weed seed free forage is zero for the weeds defined in 7-22-2101(7)(a)(I), MCA.

(a) For field forage this means that an agent found no noxious weed plants with viable weed seeds present in the field unit at the time of inspection; or that an agent found no noxious weed plants capable of producing viable weed seeds present in the field unit at the time of inspection when following the standard inspection procedures.

(b) For pellets this means that the pellets are free of viable noxious weed seeds or the pellets are greater than 99 per cent free of viable noxious weed seeds.

(c) For cubes and related materials this means that the field forage used to produce the cubes or related materials meet the standards expressed in (1)(a) above.

(d) For grain concentrates cleaned and sampled by a department-approved process, this means presence of noxious weed seeds was not detected.

(2) For purposes of these rules, the department's certification represents the condition of the field forage at the time of certification. Further cautionary restrictions with respect to pelleting, cubing or related processes, storage and transportation are imposed in these rules to help preserve that certification. However, the rules do not intend or provide for any further visual or other inspection of the certified forage after the point of initial certification, other than that which may occur as a result of enforcement or other related activity.

4.5.306 PROCEDURES FOR MONTANA CERTIFICATION OF FORAGE

PRODUCTS (GRAIN CONCENTRATES - PELLETS - CUBES - OTHER) (1) A person desiring to certify processed feed products as noxious weed seed free must make an annual application on the department's application form. The application shall be valid

from the date of issuance through December 31 of that calendar year.

(a) Applications for certification of mechanically cleaned grain concentrates must describe the method of cleaning to remove noxious weed seed. The method must be approved by the department.

(2) Persons desiring to certify processed pellets must meet the following criteria:

(a) Equipment is cleaned of any noxious weed seeds prior to processing forage for certification. Cleaning the entire feed manufacturing system through the bagging operation or bulk bins is required to prevent contamination of pellets for certification. A minimum of 500 pounds of the feed to be certified must pass through the system including the pelleter to purge the system. The feed used to purge the system will not be certified.

(b) The forage must be pelleted following the standard pelleting process.

(c) All screens must be maintained in a good operating condition.

(d) The forage pellets must be reground with a number six (6/64 inch) screen or smaller.

(e) The forage material from (2)(d) must be repelleted using steam and temperature in the process. The temperature of the pellets extruded from the die shall be greater than 140° F.

(3) Equivalent pelleting procedures: Any person may apply for department approval of an alternative procedure for pelleting certified forage. The application shall include:

(a) A complete narrative description of the procedure.

(b) Independent laboratory study that demonstrates that the process is as effective as the process in this rule.

(c) Documentation that the laboratory methods used are scientifically acceptable and results are statistically valid.

(d) The department may deny or grant approval of the request based upon the information received from the applicant and from data and information from other sources. The department may also withdraw its approval should investigations or future studies reveal the procedure is not equivalent to accepted procedures.

(4) A person desiring to certify cubes or other forage products must ensure that:

(a) All constituents be processed from certified forage meeting Montana certification standards.

(b) Equipment is cleaned of any noxious weed seeds prior to processing forage for certification. A minimum of 500 pounds of certified forage must be purged and cleaned through the entire system (from cubing to bagging or bulk storage) prior to processing cubes or other forage products. The 500 pounds of forage used to eliminate any noxious weed seeds will not be certified.

(5) A person desiring to certify grain concentrates coming from noncertified fields must meet the following requirements:

(a) an annual production plant inspection must be performed by an agent;

(b) samples will be taken by an agent and sent to the Montana State Seed Laboratory or an alternate facility designated by the department to determine if the product meets NWSFF standards of zero tolerance. The sampling procedure will follow the procedure and the minimum amount required for seed testing as prescribed by the association of official seed analysis, "2003 Rules For Testing Seeds" which is adopted

and incorporated by reference, and can be obtained from the Montana Department of Agriculture, PO Box 200201, Helena, MT 59620-0201; and

(c) at the conclusion of the inspection/sampling/analysis process, those lots of grain concentrate meeting criteria for certification will be certified. The department will provide:

- (i) an invoice for the inspection fees;
- (ii) appropriate markers; and
- (iii) transportation certificates.

(6) To enforce this chapter, the department upon presenting appropriate credentials may enter, at reasonable times or under emergency conditions, any factory, warehouse, or establishment within the state in which grain concentrates, pellets, cubes and other forage products are manufactured, processed, packed, distributed, or held, or enter any vehicle being used to transport or hold such products. The department may inspect, obtain samples and examine records at reasonable times and within reasonable limits and in reasonable manner any factory, warehouse, establishment, or vehicle and all pertinent equipment, finished and unfinished materials, containers, and labeling found in them.

(7) Grain concentrates, cubes and pellets shipped into the state as noxious weed seed free must meet all of Montana's NWSFF certification requirements.

(8) Any person may request Montana certification of their grain concentrate, pellets, cubes or other forage produced out-of-state from the department. The department may enter into agreements with other state Departments of Agriculture or appropriate state agencies or provincial governments to verify that the grain concentrate, pellets, cubes or other forage meet Montana NWSFF certification standards. The agreements may specify the types of identification markers and/or transportation certificates that are acceptable.

4.5.307 FORAGE INSPECTION PROCEDURES (1) The following procedures and processes will be required for field unit NWSFF certification:

(a) When a portion of a field is to be certified, this portion must be plainly marked or separated by a mowed strip or flagged at least 12 feet wide, to avoid cutting and mixing the certified and uncertified portion at harvest.

(b) Field units must include surrounding ditches, fence rows, roads, easements, rights-of-way and buffer zones of a minimum of 12 feet surrounding the outside edges of a field.

(c) If the field unit is certified for straw the seed that is harvested from that field unit may be considered for certification.

(2) Areas such as stack yards, storage sheds and/or bins, shall be inspected at the same time as the field and/or fields prior to stacking or filling them with certified forage. These areas shall be free of noxious weeds and/or noxious weed seeds. Contaminated storage areas will not be approved for storage of certified forage or the certification shall be cancelled if the area is contaminated with noxious weeds and/or noxious weed seeds.

(3) Harvested lots of certified forage from inspected fields may be tested or inspected at any time during normal business hours by an agent or the department. Evidence that any lot of certified forage has not been protected from contamination or is

not properly identified or separated will be cause for certification cancellation.

(4) The producer is responsible for notifying the agent at least seven days in advance of harvest to allow inspections to be completed.

(5) Field inspection must be made within seven days prior to harvest.

(a) For fields to be certified for straw only, notification and field inspections may be made up to two weeks before harvest.

(6) Fields that have been cut or harvested prior to inspection are ineligible for certification.

(7) Forms shall be completed by the agent at the time of inspection of each field unit. At the conclusion of the inspection the producer will be provided an invoice for the inspection fees and, if applicable, markers.

(8) Baling equipment must be cleaned of any noxious weed seeds prior to harvesting certified forage. If this is not possible the first three small square bales or the first large round or square bale produced shall be considered noncertified and will not be included as a part of a field unit's certified forage.

(9) Combining equipment is to be cleaned of any noxious weed seed prior to harvesting the certified whole grain field(s).

(10) Fields that appear weedy or show poor crop practices, even though noxious weeds are not present, should not be certified under the certification standards. The local agent will document the problems and has the discretion to make this judgment. A producer can challenge this decision and petition the department to assign another agent to reinspect the field.

4.5.308 FORAGE IDENTIFICATION AND TRANSPORTATION

(1) Identification of forage field grown or harvested includes the following:

(a) The producer identification number.

(b) Bales sold in one ton lots or less must be identified individually using a department approved identification marker.

(i) If each bale in lots of greater than one ton does not have a numbered tag, a transportation certificate is required.

(ii) If each bale in a load is individually marked with a numbered tag a transportation certificate is not required.

(c) Forage sold in bulk, including whole grain, must be accompanied by a completed transportation certificate.

(i) If colored baler twine is used for marking, only one strand of the colored twine is required per bale. However, a completed transportation certificate is required and must specify whether the forage was inspected for Montana noxious weeds or regional noxious weeds.

(ii) Loads of bulk hay or straw not marked with colored twine may be identified with identification markers (tags) placed on the four corners of the load.

(d) All whole grain sold in bags must be marked with a department approved identification marker.

(e) The producer shall make all reasonable efforts to ensure the whole grain is not contaminated with noxious weed seeds from the time of harvest and storage including delivery to the buyer.

(2) Forage identification markers and transportation certificates approved by the

department will be sold and distributed, respectively, by the department or its agents. The fee assessed for identification markers shall be commensurate with the actual costs of the markers.

(3) A noxious weed seed free forage product transportation certificate issued and numbered by the department must contain the following:

- (a) A statement that this forage meets the criteria set by the Montana Noxious Weed Seed Free Forage Act;
- (b) name and address of the producer;
- (c) producer identification number;
- (d) name and address of buyer;
- (e) type of forage;
- (f) identification marker (tags, colored baler twine, etc.);
- (g) number of bales by type or tonnage or weight of grain concentrate, pellets or other forage product;
- (h) date of sale;
- (i) seller's signature;
- (j) vehicle operator or driver's signature; this must be signed upon receipt of forage.
- (k) a statement that the forage meets Montana or regional certification standards.

(4) All forage sold by a producer to a second party (such as a retail outlet) for resale must be accompanied by the original transportation certificate. The second party (or retail outlet) will photocopy the original transportation certificate and provide this photocopy plus a receipt to third party buyers of the bales or forage. Third party buyers must have the photocopy of the transportation certificate and the receipt (to show where the forage was purchased) in their possession when they are transporting or storing forage in a restricted area.

(5) Identification of forage that has been pelleted, cubed or other related products shall include the following:

(a) Certified grain concentrates, pellets, cubes or other forage by products must have a separate label attached showing proof of certification of the contents with the following statement: "MONTANA CERTIFIED Noxious Weed Seed Free Forage NOTE: Certification means this product has been inspected by an agent of the MT NWSFF program using recognized inspection methods and no noxious weed seed was detected."

(b) For out-of-state pelleted, cubed or grain concentrate products the label on the product must be in compliance with Montana's standards for Noxious Weed Seed Free Forage." Montana may enter into reciprocal agreements with other states, agencies, and/or provinces that will identify the certification procedures to be used.

(c) All identification labels for grain concentrates, pellets, cubes or other forage products manufactured in Montana must be obtained from the department.

(6) It is the responsibility of each producer to make sure that all certified NWSFF sold under the program is properly labeled and identified with transportation certificates before it leaves the premises.

4.5.309 CERTIFICATION OF AGENTS (1) Each person desiring to be an agent must be trained and certified according to department standards.

(2) The following are minimum requirements for initial certification:

- (a) field inspection techniques and procedures;
- (b) map reading;
- (c) knowledge of weed management, including:
 - (i) burning;
 - (ii) mowing, cutting or rogueing;
 - (iii) mechanical methods;
 - (iv) chemicals;
 - (d) forms used;
 - (e) state and regional certification standards and guidelines;
 - (f) state and regional noxious and poisonous weed identification and training;
 - (g) certify with a written examination score of 80 per cent or better.

(3) Agents participating in the NWSFF program will receive an annual recertification packet containing:

(a) any changes or additions to the NWSFF law and rules and/or general program;

- (b) any changes or additions to the Montana noxious weed list;
- (c) form updates;
- (d) regional program changes and issues; and
- (e) an identification card to be used in the current season.

(4) Agents certifying grain concentrates from noncertified fields must be trained department inspectors familiar with grain sampling procedures.

(5) If an agent intentionally falsifies the certificate of an inspection, that agent will lose certification status.

4.5.310 STOP SALE, USE OR REMOVAL ORDER (1) When the department has reasonable cause to believe any lot of certified NWSFF is in violation of this chapter or a rule adopted by the department, it may issue and enforce a written order requiring the person holding the forage not to sell, use or remove it in any manner until written permission is given by the department. The department shall release the order when the provisions of the Act and rules have been met. If compliance is not obtained within 30 days, the department may begin proceedings for condemnation. The disposition of the forage may not be ordered by the department without first giving the owner or person from whom the forage was seized an opportunity to apply to the department for release of the forage or for permission to process or bring it into compliance with this chapter, and an opportunity to contest any such order under the provisions of 80-7-910(2), MCA.

4.5.311 NOTIFICATION REQUIREMENTS - COUNTY EMBARGO

(1) The board or their authorized representative shall, as required by 7-22-2126(4), MCA, notify the department of all embargoes issued and the final resolution within 48 hours of any embargo imposed. The notification to the department on issuance of a county embargo shall include the following items:

- (a) date and time of the embargo;
- (b) parties involved including name, address and telephone number;
- (c) any reference used by persons portraying forage as meeting requirements of the act;
- (d) the location of the embargoed forage;
- (e) volume and description of forage;
- (f) the type of violation; and
- (g) a copy of the embargo.
- (h) The notification may be accomplished by a telephone call, followed up in writing.
- (2) The notification to the department on final resolution shall include:
 - (a) date of resolution;
 - (b) identification of the embargo issued;
 - (c) a description of the final resolution including any special time schedules and/or requirements.
 - (d) The notification may be accomplished by a telephone call, followed up in writing.

4.5.312 COLLECTION OF FEES (1) The procedures to be followed by an agent employed by a governmental agency include:

- (a) collection of fees and deposition of fees in an appropriate government account;
- (b) a record of the name of the government agent collecting the fees;
- (c) a record of total fees collected;
- (d) a record of names of each producer and documentation of the fee paid;
- (e) a record of the amounts submitted to the department;
- (f) a record of the amount retained by the agent's governmental agency; and
- (g) all records be kept in accordance with generally accepted accounting principles.
- (h) The agent shall submit at the conclusion of the season complete information on the collection, deposit and disbursement of fees as set forth above including the name of the government account where the fees were deposited.
- (i) Fees collected and deposited in a government agency account may be used to support any activity or expense associated with the NWSFF program in that county.
- (2) The procedures to be followed by a nongovernment agent include:
 - (a) deposition of all fees in a department approved account in a local financial institution; or submission of all fees directly to the department. The method of deposit will be determined by the department on a case by case basis;
 - (b) submission of records to the department at the time of deposit or submission of fees;
 - (i) a record of the name of the nongovernment agent collecting the fees;
 - (ii) a record of total fees collected;
 - (iii) a list of producers and the fees paid;
 - (c) that all records be kept in accordance with generally accepted accounting principles; and

(d) the department will issue the nongovernment agent payment for services rendered.

4.5.313 FEES (1) An inspection fee of \$2.50 per acre or a \$25 minimum charge per field for forage inspection will be charged to the person for whom the forage was inspected. State mileage and per diem rates may also be assessed by the agents.

(2) Fees charged are payable to the agent:

(a) at the time of inspection; or

(b) by special arrangement made for payment through a written agreement with the agent.

(c) If additional inspections are required because of weather operation delays or other related problems, the discretion of whether to charge an additional inspection fee will be left to the agent. The department will not require that the \$1.00 per acre be charged for additional inspections due to weather, or other related problems, so the maximum inspection fee (if charged) will be \$1.50/acre.

(3) The government agent must submit \$1.00 per acre or \$10.00 for ten acres or less for hay or straw to the department and report on a financial form provided by the department. The funds and form must be submitted by September 15 of each year to ensure that the persons producing certified forage will be included on the NWSFF producer list.

(4) If the fee is not paid or a person improperly pays any fee or assessment under the provisions of 80-7-921, MCA, the department or its agent will not provide further services.

(5) An inspection fee of \$20.00 per hour or a \$40.00 minimum charge per facility per inspection will be charged to manufacturers of certified processed pellets using noncertified forage in the process and certified grain concentrates harvested from noncertified fields that are mechanically cleaned of noxious weed seed. State mileage and per diem rates may also be assessed by agents. The manufacturer shall document the tons of grain concentrate or pellets processed and submit the document to the department on or before January 30 for the previous year's production.

(6) A record of grain concentrate the pellets produced from noncertified forage shall be retained for two years.

(7) The cost for grain concentrate analysis shall be paid by the manufacturer. The product marker (label) will be provided by the department to the manufacturer of certified grain concentrates and pellets at cost.

4.5.314 CONTRACTS (1) The department may enter into contracts with organizations to conduct specific forage certification activities. These contracts may identify issues, such as time of collection of fees and deposition of fees, that are unique to that organization. The standard fees for inspections are set forth in ARM 4.5.313.

4.5.315 IDENTIFICATION OF PRODUCT AND PACKAGE TYPES

(1) The following identification information will be used by agents when completing reporting forms:

- (a) Product forage types
 - (i) Alfalfa
 - (ii) Alfalfa/grass
 - (iii) Grass
 - (iv) Straw
 - (v) Grain/barley
 - (vi) Grain/oats
 - (vii) Sanfoin
 - (viii) Other forage (agent must describe)
- (b) Package type
 - (i) Small rectangular bales
 - (ii) Large rectangular
 - (iii) Large round bales
 - (iv) Small round bales
 - (v) Cubes
 - (vi) Pellets
 - (vii) Loose forage
 - (viii) Silage
 - (ix) Grain Concentrates
 - (x) Other packages

4.5.316 CIVIL PENALTIES (1) Whenever the department has reason to believe that a violation of Title 80, chapter 7, part 9, MCA, or any adopted rule thereunder has occurred, it may initiate a civil penalty action pursuant to the Montana Administrative Procedure Act.

(2) Each violation shall be considered a separate offense and is subject to a separate penalty not to exceed \$1,000. A repeat violation shall be considered a first violation if it occurred three or more years after the previous violation.

(3) The penalty matrix set forth in this rule establishes the basic penalty value for each offense. Factors dealing with the violation may cause the matrix penalty to increase or decrease. Examples of such factors would be the person's history of compliance or noncompliance or the extent of the person's actions to sell forage or designate or imply forage as being certified when it does not meet state certification requirements.

(4) Penalty matrix:

<u>Type of Violation</u>	<u>1st Offense</u>	<u>2nd Offense</u>	<u>3rd Offense</u>
(a) Violate any lawful order, stop sale, use or removal order; or condemnation action;	\$ 200	\$ 500	\$1,000
(b) to certify or sell or advertise as certified, as noxious weed seed free any forage as free from noxious weed seed within the state, unless forage is identified under a department approved process of certification;	250	500	1,000
(c) to transport into, offer for sale, sell or use forage as noxious weed seed free, from another state, province, or country, unless the forage meets state certification standards or is allowed by an agreement between the department and another government agency;	250	500	1,000
(d) for a public utility or a local, county, state or federal agency to use forage products that have not been certified which may include but are not limited to: mulches, bedding materials and erosion control barriers;	250	500	1,000
(e) for public utilities, local, county, state or federal agencies to use seed for reclamation purposes that is not free of noxious weed seeds and certified according to Title 80,chapter 5, MCA;	250	500	1,000
(f) to improperly pay any application or certification fee or refuse to pay any inspection fees or department approved identification markers;	250	500	1,000
(g) For an agent to falsify a certificate of inspection;	250	500	1,000
(h) for an agent to improperly deposit, collect or use any certificate or inspection fees or fail to document and submit any required records to the department;	250	500	1,000
(i) to transport certified forage in a restricted area without a transportation certificate or identification markers;	250	500	1,000
(j) to falsify or alter a transportation certificate;	250	500	1,000
(k) for an agent to violate any provisions of a contract with the department.	250	500	1,000